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THE IMPACT OF THE IMPOSITION OF WESTERN NORMS ON THE
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CRIME AND DEVIANCE IN HETEROGENEOUS SOCIETIES: THE IMPACT OF THE IMPOSITION OF WESTERN NORMS ON THE ABORIGINAL PEOPLES OF CANADA AND ZIMBABWE

by

© CHARLES STEWART CANT

A THESIS

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The undersigned certify that they have read, and recommend to the Faculty of Graduate Studies and Research, for acceptance, a thesis entitled CRIME AND DEVIANCE IN HETEROGENEOUS SOCIETIES: THE IMPACT OF THE IMPOSITION OF WESTERN NORMS ON THE ABORIGINAL PEOPLES OF CANADA AND ZIMBABWE submitted by CHARLES STEWART CANT in partial fulfilment of the requirements for the degree of Master of Laws.

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ABSTRACT

This thesis represents an attempt by a non-aboriginal student of law to explain aboriginal criminality through the application of sociological concepts; as such, it probably misrepresents some of the views of both the aboriginal peoples and the sociologists. But it is hoped that it does serve the purpose of collating a diversity of materials related to the topic of aboriginal criminality. The particular concern of the thesis is to investigate the impact of the imposition of Western norms on the aboriginal peoples of Canada and Zimbabwe in relation to crime. To this end, general theories concerning crime and deviance in heterogeneous societies are examined and related to the historical and current circumstances in both countries; where available, specific studies concerning the aboriginal peoples are also examined and related to the general theories. Consideration is given to the way in which each society defines, explains, and acts with regard to deviance. In this context, the similarities between the circumstances in the two countries are more apparent than the differences. It is concluded that the particular applicability of all the general theories of criminogenesis to the aboriginal peoples of Canada and Zimbabwe can be related to the impact of the imposition of Western norms on the aboriginal peoples. This has had the effect of destroying

a culture; that is not to say that no aspects of the aboriginal cultures have been preserved, but that the imposition of a Western type normative order precluded the continuance of the traditional cultures intact; at the same time, the way in which Western norms have been imposed in each country has prevented either the assimilation of the aboriginal peoples into Western culture or the emergence of an integrated culture. It is submitted that the normative conflicts and disorders and the alienation and discrimination which result from this state of affairs are at the root of all types of explanation of aboriginal criminality. Not only does the persistence of traditional norms produce direct conflicts with the Western criminal law, but the anomic state of aboriginal society and of aboriginal individuals causes a variety of social problems which contribute to aboriginal criminality; the problems are accentuated by the fact that it is the dominant Western groups in each country who determine both which acts and which individuals are labelled as deviant or criminal. In general terms, there appear to be three options as regards the future relationship of aboriginal subcultures with Western culture: separation from it, assimilation into it, or integration with it. Examination of various specific proposals and programmes for reform of the legal system reveals that the same sort of options are involved, and that development of a truly integrated legal system would appear to be the most promising option.

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I. INTRODUCTION

Criminology can be defined as the scientific study of "crime". But crime as a behavioural category has certain disadvantages[1], and sociologists have increasingly preferred to organize their work around the concept of "deviance". Deviance can be loosely defined as the failure to obey "norms", which are the accepted rules or expectations of any group. "The study of such behavior may then include all cases of rule making, rule breaking, and rule enforcement, of which criminal law will be one particular example."[2]

Dinitz, Dynes, and Clarke[3] comment that understanding deviance involves at a basic minimum at least three dimensions, and they proceed to explain that every society defines, explains, and acts with regard to deviance. It is submitted that an examination of each of these dimensions of definition, explanation, and action can incorporate most of the sociological perspectives in criminology and contribute to the understanding of crime. Explanations or theories for the existence and persistence of deviant or criminal behaviour must take into account the processes by which certain behaviour comes to be defined as deviant or criminal and the action taken against deviants or criminals.

The particular concern of this thesis is to investigate the impact of the imposition of Western norms on the aboriginal peoples of Canada and Zimbabwe in relation to

crime. The general theories relating to crime and deviance in heterogeneous societies will be examined in terms of the aforementioned dimensions. Specific theories and research relating to crime amongst Natives in Canada will also be examined. The historical and current circumstances in both Canada and Zimbabwe will be analysed, and an attempt will be made to relate the theories and research to the existing situations in those countries. It should be noted that empirical testing of the theories is beyond the scope of this study. There appears to have been a dearth of criminological research on aboriginal criminality, particularly in Zimbabwe, and it is merely hoped that this limited study may highlight certain areas which could be usefully subjected to scientific research.

At this point, a few comments on approach and terminology may be useful. "Western norms" will be contrasted with the traditional norms of "aboriginal" communities - specifically the "Indian" community in Canada and the "African" community in "Zimbabwe". The term "Western norms" is used to refer to the normative order which is generally associated with modern, industrial societies in Western Europe and North America. As a result of colonization, Western norms have been imposed on "aboriginal" communities in a number of

countries, and that term is used to describe the peoples inhabiting those lands before the arrival of colonists. In the Canadian context, the real concern of this study is, therefore, with full-blood "Indians" (Red Indians as opposed to natives of India). However, most of the existing criminological research groups Indians with Metis (persons of mixed Indian and non-Indian ancestry) and sometimes with Eskimos, and refers to all such people as "Natives". A further complication is introduced by the Indian Act which creates a legal distinction between "status Indians" (persons who, pursuant to the Act, are registered or entitled to be registered as Indians, but who are not necessarily full-blood Indians) and "non-status Indians" (persons who may be full-blood Indians, but who have lost their official Indian status as a result of failure or refusal to register, enfranchisement, or mixed marriage, on the part of their ancestors or themselves). To limit the ambit of this study, the other aboriginal people of Canada, that is the Eskimos (or Inuit), will not be specifically considered. In the Zimbabwean context, the term "African" is used to refer to the indigenous peoples of Zimbabwe comprising two main tribal groupings, the Shona and the Ndebele. In most of the earlier legislation and some of the texts, these people are referred to as "Natives". Persons of mixed African and non-African ancestry are generally referred to as "Coloureds". Finally, "Zimbabwe"

refers to the country which until 1979 was called "Rhodesia" and which, at the time of writing, is still officially called "Zimbabwe Rhodesia", although the word "Rhodesia" is likely to be dropped from the name.

In the light of current political developments in Zimbabwe, a question which presents itself is as to the significance of investigating the impact of the imposition of Western norms on aborigin[al communities in relation to that country. If Europeans are no longer in a position to impose their values on the A[frican people, does the matter under investigation have any[thing other than historic importance? It is submitted that this question must be answered in the affirmative: the impact of Western norms on the African people will c[ontinue to be significant; Mittlebeeler,[4] in considering the problems of the interplay of European criminal law and [African custom in Rhodesia before 1970, wrote:

> "And such problems [will not disappear if and when an African na[tionalist government appears; for it will be mar[ried not by Europeanized and tribal chiefs [but by the deTribalized African who accept[s the theory and structure of the twentieth c[entury nation-state. He is likely to have the[European concept of the criminal law ...P[ossibly with the great maj-ority of interpla[y cases, the law would not be modified in any wa[y]."

That is not to say that the c[ontent of the criminal law is unlikely to change. Legislat[ion creating political crimes and racial inequalities, for [example, is certain to be fundamentally revised. But t[hose areas of the law which impinge on African traditiona[l values, and with which this

study is primarily concerned, are not likely to undergo any drastic change.

Footnotes (Chapter I)

1. See, inter alia, Sellin (ii); Wright pp. 22-23.
2. Wright p. 23.
3. Dinitz, Dynes, and Clarke p. 3.
4. Mittlebeeler pp. 213-214.

II. DEFINITION

Whose Norms?

In a homogeneous or mono-cultural society there is little difficulty in the identification of the norms; most people within such a society share the same basic values so there is general agreement as to what constitutes deviance. "The situation is quite different in modern societies. The normative order becomes more and more complex since there is greater diversity within the society itself."[1] This diversity of norms in modern societies has been produced by a variety of factors which can be related to revolutions which have occurred in mobility (both physical and social), industry, science, and organization, largely as a result of the widespread migration of people, most modern societies are multi-cultural, and different cultures hold different values. Becker[2] expresses the problem of definition which may occur: "A person may break the rules of one group by the very act of abiding by the rules of another group. Is he, then, deviant?". In a heterogeneous or multi-cultural society there is a multiplicity of norms and, unless a state of anarchy is to exist, certain standards of behaviour must be required of all members of such a society. "With increasing disparity in values, some common denominator for conduct is needed and hence resort is made to the codes of the criminal law which apply to everyone within the same political jurisdiction."[3]

The problem is as to whose norms should be incorporated in the criminal law. According to whose norms is an act to be defined as criminal? The renowned English jurist Dicey[4] demonstrated that in any given-society at any given-time, the law-making machinery will be dominated by a definite social class. Norms will be defined according to the norms of the social groups holding political and economic power, and it is their norms which will be enforced by law. The dominant groups who influence the formulation of the criminal law need not be in the majority in numbers and may not even represent the interests of the majority in the population. "Not only are the older and generally accepted mores which punish such offences as murder, rape, and robbery perpetuated in the criminal code, but a host of new laws spring up which seek to define new areas of behavior where conduct is impinging on the values held by the group in dominant political authority."[5]

Norms in Canada and Zimbabwe

Both Canada and Zimbabwe are countries with heterogeneous societies. A particular feature, common to both countries, is that they were colonized by people of European descent who became the dominant political force and can, therefore, be expected to have imposed their values on the aboriginal peoples living in those lands. Political boundaries were established which brought various aboriginal

communities, each with its own particular values, within the same political jurisdiction. The colonists themselves came from a variety of countries, and subsequent migrations of people have added to the complexity of the normative order in each country. Furthermore, norms vary over time as well as space and within as well as between societies. It would, therefore, be an over-simplification, in the case of either country, to state that the colonists had one set of norms which were imposed on an aboriginal people with one different set of norms. It is, however, possible to identify certain features which were common to the normative order of the aboriginal peoples (which will be referred to as "traditional") and to contrast those with features common to the normative order which resulted from colonization (and which will be referred to as "Western"). The distinction is essentially that between primitive, tribal, rural society and modern, industrial, urbanized society. The contrasting features of the two types of normative order are illustrated in Diagram 1. The differences in the two types of normative order are reflected in differences in the type of legal system required by each society. The contrasting features of the traditional and the Western types of legal system are illustrated in Diagram 2.

Before the arrival of the colonists, aboriginal society was at a relatively primitive stage of development. The range of activities in which its members were involved

Diagram 1

CONTRASTING NORMATIVE ORDERS

TRADITIONAL	WESTERN
simple set of norms.	complex set of norms.
agreed norms.	divergent norms.
internalized norms.	imposed norms.
integrated norms.	lack of integrated norms.
immediate & certain sanctions.	uncertain & delayed sanctions.
deviant behaviour seen as one part of total behaviour.	deviant behaviour seen as characteristic of total person.

(Adapted from Dinitz, Dynes, and Clarke p. 5)

Diagram 2

CONTRASTING LEGAL SYSTEMS

TRADITIONAL	WESTERN
simple legal system.	complex legal system.
laws defined according to norms of community.	laws defined according to norms of dominant groups.
laws govern one community.	laws govern all communities in same political jurisdiction.
laws unwritten and flexible.	laws written and precise.
laws founded on traditional concepts, e.g. worship of ancestral spirits, chieftanship.	laws founded on Western concepts, e.g. Christianity, democracy.
law administered by tribal chiefs within community.	law administered by institutions of state.
emphasis on conciliation and compensation.	emphasis on punishment.

was narrower than in modern societies which meant that there was no need for the complex rules which govern conduct in more highly developed societies. The aboriginal peoples lived in homogeneous communities which were basically independent of one another and were not linked to form a single state (even the Ndebele "kingdom" which had a centralized control structure was itself a fundamentally homogeneous community). Within each such community, an integrated set of norms evolved which was shared by most members of the community and which became internalized as part of the personality of each member. There was general agreement as to what constituted deviant behaviour and sanctions against such behaviour were likely to be swift and certain. But the offender was not necessarily regarded as a deviant person just because he had committed a deviant act; his personality was assessed in terms of his total behaviour. The legal system reflected the homogeneous nature of the normative order which it was designed to uphold.

Into this situation was thrust the Western concept of the state; people with divergent norms were brought together in a heterogeneous society. To achieve some uniformity of behaviour, certain norms had to be imposed on people who did not share those norms. Rapid development increased the scope of activity and necessitated more complex rules of behaviour. Segmentation of social institutions meant that norms were no longer integrated. Sanctions against deviance became less personal with the result that they were not always applied and, where applied,

were delayed; furthermore, a single deviant act could result in the offender being re-defined by society as a deviant person. This fundamental change in the nature of the normative order necessitated the introduction of a different type of legal system.

The introduction of a Western type normative order and legal system raised the problem of whose norms should be incorporated in the criminal law. "When a political power from the outside assumes dominance over an indigenous population, decisions have to be made respecting systems of social control. Is there to be complete supersession of the indigenous? Is the indigenous system to be supported? Is part of it to be rejected, part accepted?"[6] It is necessary to consider the extent to which traditional values have been recognized and incorporated in the law of Canada and in the law of Zimbabwe.

Legal Norms in Canada

> "Before the coming of the white man, we had a pretty good education system...We also had a code of morals and ethics, and an economic system. The only thing that wasn't so good was our immigration policy..." (District Council of British Columbia Indian Chiefs)[7].

The "immigration" of peoples of European descent to the expanse of land which now constitutes Canada took place in piecemeal fashion. The first permanent settlements were established by the French in 1605 at Port Royal and in 1608

at Quebec. British settlements were established in other parts of the region and, after the British conquest of Quebec in 1759 and the American Revolution, the pace of immigration to British North America increased rapidly. Confederation began with the British North America Act of 1867 whereunder the Dominion of Canada was constituted.

A perusal of the history of the administration of justice in Canada reveals that there has been complete supersession of the indigenous systems of social control. "Historically, the mechanism by which the British colonies in North America adopted the common law system, in general, and the English law, as it existed at the time, specifically, is somewhat complicated."[8] Suffice it to say that the English common law system was received throughout Canada, with the exception of Quebec which has a civil law system. From the outset, the French colonial authorities considered the Indians to be fully subject to French civil and criminal law. By contrast, early British colonial policy was based on the concept that the Indians constituted separate and sovereign peoples subject to their own law although "under Royal protection".[9] However, in 1826 a decision was made which marks a turning point in Canadian Indian legal history. At the Assizes for the Western Circuit Court of Upper Canada, an Indian by the name of Shawanakiskie had been convicted of the murder of another Indian and sentenced to death. After extensive discussion between the local and Imperial powers as to whether Indians were subject to British/Canadian law,

the British Government issued a warrant for the execution of Shawanakiskie and confirmed the jurisdiction of the Court. Henceforth Indians were to be subject to British and Canadian law.

Under the British North America Act (the major written component of the Canadian constitution) legislative authority is vested in the Parliament of Canada and the ten provincial legislatures. In terms of Section 91, the Parliament of Canada has exclusive legislative jurisdiction over "Indians and Lands Reserved for Indians". The Indian Act, R.S.C. 1970 Vol. IV c. I-6 (a federal statute promulgated in 1876 and which has been revised from time to time) represents the principal consolidation of laws relating specifically to Indians. This Act applies essentially to status Indians and confers certain rights and imposes certain obligations on them. It contains detailed provisions regulating life on the reserves, but makes no provision for the application of customary law nor for the constitution of tribal courts. The only provision which confers any legal jurisdiction on Indians is Section 81 which empowers the council of a band to make by-laws "not inconsistent with this Act or with any regulation made by the Governor in Council or the Minister" for certain specified matters, including the observance of law and order, the prevention of disorderly conduct, and the imposition of a fine not exceeding $100 or imprisonment for a term not exceeding 30 days or both.

Not only have traditional norms played no part in the formulation of the laws which apply to Indians, but the

law has been used as an instrument by which to regulate and change the whole lifestyle of the Indian people. Thus, for example, at various times, special offences which only Indians could commit have been legislated in particular offences relating to alcohol, and laws have been made prohibiting traditional customs such as the Potlach and Sundance ceremonies. Lautt[10] goes so far as to refer to the whole process as "cultural genocide".

Legal Norms in Zimbabwe

European settlement of the territory which is now Zimbabwe began in 1890 under the auspices of the British South Africa Company. Article 14 of the Royal Charter issued to the Company provided:

> "In the Administration of justice...careful regard shall always be had to the customs and laws of the class or tribe or nation to which the parties respectively belong, especially with respect to the holding, possession, transfer and disposition of lands and goods, and testate or intestate succession thereto, and marriage, divorce, legitimacy, and other rights of property and personal property, but subject to any British laws which may be in force...".

To what extent was effect given to this promising provision? Initially, the British Government recognized Lobengula (chief of the Ndebele people) as sovereign of the entire territory, but after his defeat by B.S.A. Company forces and subsequent death, no African sovereign was recognized and the British Government began to establish more effective control over the territory. On 10th June 1891, the British High Commissioner for South Africa had issued a Proclamation providing that the

law to be administered in all proceedings, whether civil or criminal, shall be the law for the time being in force in the Cape Colony. This had the effect of introducing a common law system, based on Roman-Dutch law, as the legal system of the country. The reception of Roman-Dutch law was confirmed by the Southern Rhodesia Order in Council of 1898 (the first constitution of the country). But limited provision was made for the application of African custom in civil matters. The Order in Council declared that, in all civil cases between Natives, the High Court and magistrates' courts were to be guided by Native law "so far as that law is not repugnant to natural justice or morality, or to any Order...Proclamation or Ordinance". Thus customary civil law was (to some extent) to be recognized by the European courts but not African criminal law. Although African tribal courts continued to function, they had no lawful authority to try any type of dispute until 1937 when provision was made for the establishment of Native courts with limited civil jurisdiction, but no criminal jurisdiction. Goldin and Gelfand[11] sum up the early history of the administration of justice in the following comment: "The administration was primarily concerned with security and the political and economic control of natives and not with the preservation of customary law and tribal courts."

What is the position today? Section 87 of the 1979 Constitution of Zimbabwe Rhodesia provides:

> "Subject to the provisions of any law for the time being in force in Zimbabwe Rhodesia relating to the application of African Customary law, the law to be admin-

istered by the l
in Zimbabwe Rho
High Court shal
the Colony of t
10th June, 1891
legislation hav
force of law.".

Similar provisions are to be found in all the earlier constitutions of the country. Although the 1979 Constitution will be replaced by a new constitution in the near future, it seems likely that a similar provision will be included in any new constitution.[12] Various statutes presently in force make provision for the application of African customary law, in particular the African Law and Tribal Courts Act, 1969 (Chapter 237). This Act defines customary law as "the legal principles and judicial practices of a particular African tribe except insofar as such principles and practices are repugnant to natural justice or morality or the provisions of any enactment". The Act provides that, in the determination by any court of law of any civil case between Africans or between an African and a non-African, the decision may be given in accordance with customary law. In certain specific cases between Africans (relating to family, succession, and property matters) customary law is to be applied "unless the justice of the case otherwise requires". In any other case, the common and statutory law of the country is applicable. The Minister of Internal Affairs is authorized to constitute tribal courts and such courts have jurisdiction to try civil cases in which customary law is applicable. For the first time in the history of the country, tribal courts may exercise limited criminal jurisdiction, but they may not apply cus-

comary law in deciding criminal cases. "Under African law and custom the distinction between criminal law and civil law as known to Western lawyers does not exist. An award of compensation and any other relief awarded to a plaintiff or a complainant are considered as "punishment" in the sense in which the term is used by Western lawyers in criminal law."[13] As a result, the decision as to what is a criminal matter is based on Western rather than traditional concepts.

Thus it can be seen that, although there has been limited recognition of African custom in civil cases and of African tribal courts, the criminal law of the country is founded entirely on Western values. Furthermore, as in Canada, the criminal law has often been used as an instrument to regulate and change the lifestyle of the aboriginal peoples. Discriminatory legislation, such as pass laws, has created offences which only Africans could commit, and laws have been made prohibiting traditional practices such as "witch" divining.

It is apparent from the foregoing that, in both Canada and Zimbabwe, the criminal law is founded on Western rather than traditional definitions of deviance. Before proceeding to consider the various theories which have been advanced as explanations of crime in heterogeneous societies, are any explanations to be found within this dimension of definition?

Definitions Create Crime

In a sense, definitions are at the root of all

criminality. It is obvious that, if no acts were defined as criminal, there would be no crime and no criminals. But it is equally obvious that society cannot function without prohibiting some types of behaviour, and that removing the definitions would not cause the behaviour itself to disappear. What is of concern is the explanation of behaviour which occurs despite the fact that it has been defined as criminal. Does the process by which certain types of behaviour come to be defined as criminal offer any explanation of criminality? In this sense, can it be said that the definition of crime is itself a cause of crime? As will be seen, the "labelling" school of criminological thought has focused attention on this question. Proponents of this school of thought assert that becoming a criminal is often the result of a process beginning when particular acts are defined as deviant. Their emphasis on who has the power to apply the labels appears to have particular significance in regard to the situation in Canada and Zimbabwe. As has been shown, Western definitions of deviance provide the foundation of the criminal codes. Behaviour which is not regarded as deviant by the Aboriginal peoples may nevertheless be defined as criminal. It is a well known fact that people are reluctant to do anything they themselves consider deviant, for example stealing from a neighbour, but that they will more readily commit a crime if it is not deviant in their eyes, for example helping themselves to the property of a large impersonal organization. In circumstances where laws have attempted to enforce moral values to which a substantial

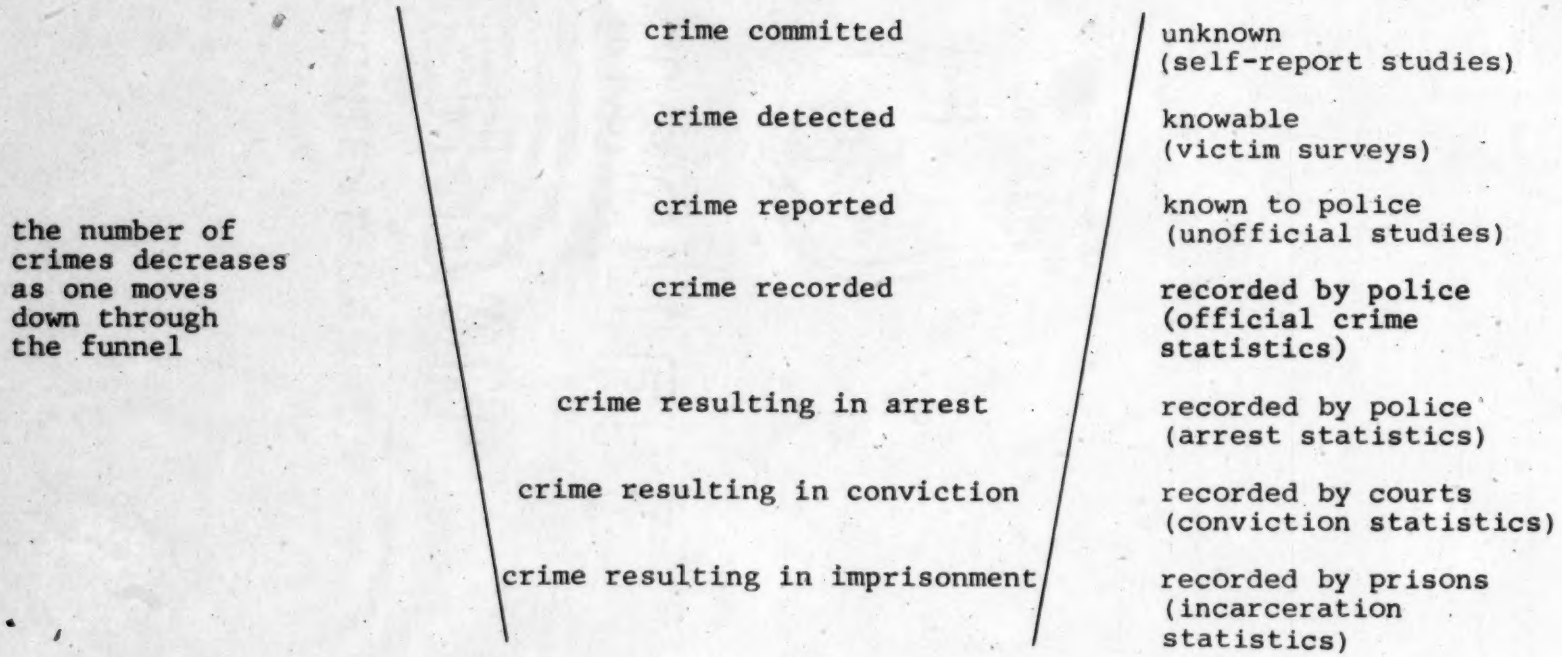
proportion of the population do not subscribe; widespread criminal activity has ensued. Examples are British and American laws which have attempted to prohibit or control abortion, prostitution, gambling, and the use of alcohol and drugs. An obvious consequence of the imposition of values on people who do not subscribe to them is that those people will not willingly obey the laws which attempt to enforce those values; rejection of the laws may lead to criminality and the formation of criminal subcultures. It is considered possible that this factor explains a great deal of modern crime. Furthermore, as will be seen when the other theories of criminogenesis are examined, the imposition of norms on people who do not share those norms can lead to criminality in less obvious ways than rejection of the legal norms; criminality may, for example, result simply from a lack of understanding of the prevailing norms. So it is clear that the process by which certain types of behaviour come to be defined as criminal must be kept in mind in attempting to explain that behaviour.

Crimes Create Statistics

Having defined criminal behaviour, society becomes concerned with the level and pattern of such behaviour amongst its members. The crimes committed by aggregates of individuals can be compiled in the form of statistics, and a lot of criminological research is based on the analysis of such statistics. The various sources of the statistics and the "shrinkage factor" are illustrated in Diagram 3. Most Western

Diagram 3

FUNNEL OF CRIME


the number of crimes decreases as one moves down through the funnel
crime committed
crime detected
crime reported
crime recorded
crime resulting in arrest
crime resulting in conviction
crime resulting in imprisonment
unknown (self-report studies)
knowable (victim surveys)
known to police (unofficial studies)
recorded by police (official crime statistics)
recorded by police (arrest statistics)
recorded by courts (conviction statistics)
recorded by prisons (incarceration statistics)

(Expanded and adapted from Silverman and Teevan p.68)

countries (including Canada but, unfortunately, excluding Zimbabwe) collect and publish comprehensive statistics of recorded crime. Official statistics are generally based on crime figures recorded by the police; but self-report studies indicate that a high proportion of crime committed goes undetected, victim surveys indicate that a high proportion of detected crime is not reported to the police, and unofficial surveys at police stations indicate that a high proportion of reported crime is not recorded by the police.[14] The main problem in scientific analysis of the official crime statistics is that the difference between crime committed and crime recorded may be biased in unknown ways. It is obvious that not all recorded crime results in arrest of the offender, that not all arrested offenders are convicted, and that not all convicted offenders are imprisoned, so that analyses based on arrest, conviction, or imprisonment statistics have a progressively narrower base. Again, the main problem is that unknown variables may affect the statistics at each stage in the justice process. Transformation of the tallies into crime rates tend to compound the difficulties. But, provided the problems are kept in mind, it is submitted that statistics do, at least, provide a useful indicator of the degree and nature of the perceived crime problem in a society. Furthermore, although analysis of the various types of statistics does not explain crime, it does reveal correlations which point to the social locations of crime, and on which explanations can be based.

What do the statistics reveal about aboriginal criminality in Canada and Zimbabwe?

Canadian Statistics

Unfortunately for the purposes of this thesis, the official crime statistics (federal and provincial) are not generally broken down according to the race of the offender. But during the past few years, a number of publications have included compilations of statistical data relating specifically to Native offenders. Although these tend to focus on incarceration figures and on particular geographic areas, some general observations can be made.

The most striking observation is that the Native peoples of Canada (who comprise 1.4% of the total population of the country)[15] are over-represented in all the available criminal statistics. This over-representation is particularly apparent in the incarceration statistics. Examination of a report prepared for the Law Reform Commission of Canada[16] reveals that throughout Canada, but in Western Canada in particular, Indians and Metis are incarcerated in numbers far in excess of their proportions in the general population. Comprehensive data are presented for the province of Saskatchewan and illustrate the depth of the problem. In 1971 Natives comprised 12.7% of the population of Saskatchewan but in 1970-71, 53.8% of all admissions to provincial institutions were Natives, this figure increasing to 58.3% in 1971-72. The over-representation of Native women in correctional institutions is particularly marked.

In 1971-72, an astonishing 90.4% of all admissions to Pine Grove Institution (Saskatchewan's sole prison for women) were Natives. The incarceration statistics for the other western provinces show roughly similar disproportions.

The over-representation of Native peoples is also apparent in such conviction and arrest statistics as are available. Research indicates that rates for convictions of indictable offences are generally five times higher for people of Indian origin than for those of non-Indian origin.[17] A study conducted in Winnipeg[18] shows that Indians, and especially Indian women, are over-represented in both arrest and court disposition statistics. Analysis of the arrest statistics for a one year period (1969) revealed that, although Indians comprised about 3% of the urban population, Indian males accounted for 27.2% of all male offences, and Indian females accounted for 69.5% of all female offences. Of all males convicted 27.9% were Indian, and of all females convicted 70.6% were Indian.

It is apparent that there is a serious clash between the Native peoples of Canada and the criminal justice system. Several other observations concerning Native involvement with the criminal justice system can be drawn from the existing statistics. The following conclusions are extracted from the report of the Law Reform Commission[19] and tend to accord with the findings of other statistical studies.[20]

1. Native offenders usually are involved in less serious crimes than non-Native

offenders. Many are incarcerated for breaches of provincial and municipal statutes, particularly liquor and vehicles legislation.

2. A large number of Native offenders are sent to jail for non-payment of fines. In 1970-71, 57.4% of all Natives admitted to Saskatchewan jails, constituting 1/3 of all admissions, were admitted for non-payment of fines. (As compared to 34.7% of all non-Natives admitted).

3. Federal offences committed by Native offenders are more likely to be offences against the person. The more common federal offences committed by Natives are assault, theft, breaking and entering, causing a disturbance, and driving offences involving the use of alcohol. Native offenders rarely are involved in narcotics offences.

4. Native offenders in both provincial and federal institutions have a higher recidivism rate.

5. Much, if not most, Native crime is associated with the use of alcohol.

A further observation based on statistics is that the Native population is involved in a profound rural-urban migration. For example, in Saskatchewan during the 1960's, the urban proportion of Indians roughly quadrupled.[21]

Zimbabwean Statistics

There does not appear to be any published statistical documentation which relates specifically to African involvement in crime. But a report of a survey carried out by the Rhodesia Prisoners' Aid Society[22] does provide some relevant data on which limited observations can be based. What is of interest is the extent to which these observations compare with the observations based on the Canadian statistics.

The report indicates that a disproportionately high percentage of Africans and Coloureds are imprisoned while a disproportionately low percentage of Europeans and Asians are imprisoned. As at 31st December, 1973, Africans comprised 95.03% and Coloured 0.31% of the population of Zimbabwe. But, of all admissions to the Salisbury Central Prison (Zimbabwe's largest correctional institution for males) during March and May 1973 (excluding admissions for political offences), 97% were African and 1% Coloured. Whilst these disproportions are not as striking as those revealed in the Canadian statistics, the high proportion of Africans in the total population makes their over-representation in the criminal statistics very significant in relation to the country's perceived crime problem.

Unfortunately for present purposes, the other statistical data contained in the report are not classified on the basis of race. But since the vast majority of those admitted to prison are Africans, the following conclusions, which are extracted from the report, obviously relate primarily to African offenders:

1. 41% of the crimes that result in imprisonment fall into the category of minor statutory offences, and 34.7% take in all crimes of dishonesty including petty thefts and misappropriations some of which could be validly categorized as minor offences.

2. Of all admissions, 65% were admitted for non-payment of fines. 48% of those admitted were unemployed, and for this reason were presumably unable to raise the money to pay their fines. Of those who were employed on

admission, 49% gave as their reason for not paying their fines "insufficient funds on arrest". Only 2 people gave as their reason for not paying their fines "refused to pay". However, the Director of Prisons indicated that, in his opinion, a fairly high proportion of admissions have money on them with which they could pay the whole or part of their fines.

3. Although 67% of those admitted to prison were resident in the city of Salisbury prior to their arrest, only 2.8% were born in a city or town, and 49.6% had arrived in Salisbury from the rural Tribal Trust Lands less than a year before their admission to prison.

Both the Canadian and the Zimbabwean statistics indicate differences in the level and nature of recorded crime between the aboriginal peoples and the other peoples of each country. Although it seems likely that these differences in perceived criminal behaviour reflect, in some measure, differences in the level and nature of actual criminal behaviour, this cannot be regarded as established. The extent to which the differences that appear in the statistics result from the operation of unknown variables within the justice process itself remains to be determined.

In the next chapter, an attempt will be made to explain the differences in the recorded crime rates, and to identify possible causes of aboriginal criminality; this should in turn help to indicate the extent of, and reasons for, any differences in the patterns of actual criminal behaviour. General theories which have been advanced to explain crime and differences in crime rates will be examined, and these will be related to the circumstances in Canada and Zimbabwe. In particular, the extent to which aboriginal criminality can be

attributed to the imposition of Western norms on the aboriginal peoples, will be considered.

Footnotes (Chapter II)

1. Dinitz, Dynes, and Clarke p.5.
2. Becker (i) p. 8.
3. Fuller p. 82.
4. Dicey p. 13.
5. Fuller p. 82.
6. Mittlebeeler p. 9.
7. Quoted in Lautt p. 56.
8. Gall p. 43.
9. Smith p. XV.
10. Lautt p. 70.
11. Goldin and Gelfand p. 6.
12. Section 89 of the proposed British-made Constitution (contained in the Schedule to the Constitution of Zimbabwe Rhodesia Amendment (No. 4) Act, 1979 (Act 44 of 1979) retains the wording of Section 87 of the 1979 Constitution except that the words "Zimbabwe Rhodesia" are replaced wherever they occur by the word "Zimbabwe".
13. Goldin and Gelfand p. 123.
14. For references to some such studies, see Nettler pp. 65-86; and Silverman and Teevan pp. 68-70.
15. Fawcett p. 16-3.
16. Schmeiser. (See also summaries in Jefferson pp. 68-69 and Lautt pp. 81-84).
17. Canadian Corrections Association. Indians and the Law. Ottawa: Queen's Printer, 1967 p. 21. (See Bienvenue and Latif p. 356).
18. Bienvenue and Latif.
19. Schmeiser pp. 81-82.
20. See, for example, Bienvenue and Latif.
21. Anderson, A.B. "Review Essay: The Urbanization of

Canadian Native Peoples". Presented to the Community Liaison Committee, Saskatoon City Council, December 1978. (See Lautt p. 64).

22. Nairn.

III. EXPLANATION

Type of Explanation Sought - Sociological

"There are at least as many explanations of "crime" as there are questions asked about it."[1] The concern of this thesis is with those theories which have been advanced to explain crime in heterogeneous societies, particularly theories which might explain aboriginal criminality in Canada and Zimbabwe. The main concern is with the behaviour of aggregates rather than individuals, which means seeking sociological rather than purely biological, psychiatric, psychoanalytic, or psychological explanations of criminality. The sociological approach attempts to identify common factors which might explain behavioural patterns. To what extent is such an approach justified? Voluntarists take the view that the decision to engage in deviant behaviour is a result of conscious choice and that the process whereby the decision is reached is unique for each individual; they therefore seek causes of crime within the individual. Mechanists, on the other hand, suggest that the cause of deviance is more or less out of the hands of the deviant himself and they seek the causes of crime in the society. It is submitted that the sociological approach can be justified to the extent that it avoids either extreme. Whilst acknowledging that each individual ascribes meaning to a situation by interpreting the information he receives about it, common factors can be found which affect the way in which particular groups of people interpret the information they receive and the sort of information they receive; these factors can be

located both within the individuals and in the society. "One can agree with Tolstoy's humanistic dictum that "the seeds of every crime are in each of us" and yet hold, with the social scientists, that the seeds are germinated under different conditions that raise or lower the probability of their fruition."[2]

The sociological approach itself incorporates two main types of explanation which differ to the extent that one emphasizes the personal factors and the other the social factors. Nettler[3] refers to the former type of explanation as "sociopsychological" and to the latter type of explanation as strictly "sociological". He explains that the strictly sociological explanations of crime place the blame on societal arrangements that are prior to, external to, and compelling of any particular person; they do not deny the importance of human motivation, but they locate the sources of motives outside the individual and in the cultural climate in which he lives. By contrast, the sociopsychological explanations place more of the causal emphasis on the individual actor, or upon kinds of actors, and upon the interaction between persons; they do not deny the impact of the cultural environment, but they pay more attention to individual differences and to the ways in which we affect each other. Nettler subdivides the sociological explanations into two groups, the subcultural variety and the structural variety and likewise subdivides the sociopsychological explanations into two groups, the symbolic-interactionist variety and the control variety. This method of grouping

the explanations will be used in examining the sociological theories of criminogenesis. But it must be borne in mind that many of the theories overlap, so that any grouping must of necessity be somewhat arbitrary.

1. The Strictly Sociological Explanations

a. The Subcultural Variety

> "The concept of a culture refers to the perceived standards of behavior observable in both words and deeds, that are learned, transmitted from generation to generation, and, hence, somewhat durable... Social scientists have invented the notion of a subculture to describe variations, within a society, upon its cultural themes."[4]

The subculture is a culture which is identifiable with a particular segment of the society but which differs from the culture of the society at large (or, more accurately, from the culture of the dominant segment of the society).[5] The subcultural theories examine the differences between the behavioural prescriptions of the subculture and those of the dominant culture. The underlying hypothesis is that these differences explain criminality on the part of the members of the subculture; to the extent that members of the subculture conform to behavioural prescriptions which are different to those of the dominant culture, their behaviour is likely to contravene the existing legal code.

A number of studies of juvenile delinquent subcultures have been made, the foremost examples being the work of Cohen and the later work of Cloward and Ohlin. These are often referred to as the subcultural theories,[6] but their emphasis is on the position of the subcultures

in the social structure rather than on the cultural differences themselves; for this reason, these studies will be grouped with the structural variety of explanations.

At the root of all the subcultural explanations of crime (and, for that matter, the structural explanations of crime as well) is the notion of culture conflict. Culture conflict theory was articulated by Sellin in 1938.[7] He identified the fact that, in complex societies, there are groups of people who have developed different sets of conduct norms. "A conflict of norms is said to exist when more or less divergent rules of conduct govern the specific life situation in which a person finds himself."[8] The conflict that results from divergent sets of norms may be internal or external to an individual. Where the individual has learned the values of two different cultures, internal conflict will occur in any situation in which the behavioural prescriptions of the two cultures differ. Where the individual has internalized only the values of his own culture, external conflict will occur in any situation in which the behavioural prescriptions of his culture differ from the behavioural prescriptions of the dominant culture.

The principal application of culture conflict theory has been to explain ethnic differentials in the crime rates of heterogeneous societies. Research has established the existence and nature of such differentials.

> "The research on the differential criminality of ethnic groups can be summarized cross-culturally by saying that:
>
> Ethnic groups <u>do</u> exhibit different patterns

> of criminal behavior within the states in which they reside.
>
> These patterns differ both in the kinds of crime committed and in the relative amounts of specific crimes.
>
> These patterns cannot be explained away as due only to the length of residence of a minority in a country, its age and sex distribution, or its socioeconomic position, or to prejudice in the judicial system.
>
> Migrants tend to exhibit in their adopted lands the kinds of crime familiar to their homelands.
>
> These ethnic patterns of criminality are, like all else, subject to change with time."[9]

The subcultural theories explain these differentials by reference to the differences between the behavioural prescriptions of the ethnic culture and the behavioural prescriptions incorporated in the law of the state. This theoretical framework has been applied and, to a great extent, confirmed in a number of studies of criminality amongst immigrants to the U.S.A.[10] It has also been used in studying other societies which have experienced a large influx of immigration, including countries where the influx has resulted from colonization.[11] Culture conflict theory has also been applied to explain differentials in the crime rates of different regions, generations, and even social classes. Miller,[12] for example, suggests that being reared in the lower class means learning norms which may differ from the middle class norms incorporated in the law.

b. The Structural Variety

The structural explanations are also rooted in the conflict of norms which exists in a complex society; but they

locate the source of conflict in the stratification of the social structure rather than in persistent cultural differences between different groups in the society. In other words, they shift the emphasis from "horizontal" divisions within society to "vertical" divisions within society, from "how" people are to "where" they are in the social structure.

This concern with where people are in the social structure arises from the fact that the "lower" classes (as determined by various indicators of socioeconomic status such as income, occupation, and education) are proportionally over-represented in the criminal statistics of developed countries. How is this over-representation to be explained? "...Few criminologists would now accept a simple causal connection between poverty and crime, but nevertheless many of the more recent theories place great stress on the individual's place in the class structure."[13] The main dispute is as to whether the disproportion revealed by the statistics results from a class differential in the commission of crime or simply from a class bias in the operation of the legal process. Each view has been supported by theoretical and experimental studies,[14] and it seems likely that the disproportion results from a combination of both factors.

The structural theories explain the class differential in the commission of crime in terms of the "deregulation" of social life in complex societies. They are derived from the ideas of Durkheim.[15] He used the word "anomie" to describe the disintegrated state of a society in which man's social environment no longer effectively regulates his behaviour. He re-

garded this as a fairly abnormal state of affairs arising in periods of social change. Merton[16] has adapted the concept of anomie in order to explain deviance in modern Western societies. His hypothesis is that a state of anomie exists whenever there develops a disjunction between the socially prescribed goals of human action and the societally structured legitimate means of achieving them; individual reaction to this state of affairs will differ according to the person's psychological makeup, and may take the form of conformity, innovation, ritualism, retreatism, or rebellion. Merton considered that modern Western societies tend to overemphasize specific goals (particularly material success) without a corresponding emphasis on institutional procedures to allow their achievement, with the result that persons lacking legitimate means to success may strive for the goals by deviant means, or may reject the goals themselves.

Similar ideas are to be found in many of the empirical studies of juvenile delinquency. Cohen[17] saw delinquency as a shared "reaction formation" developed in a process of interaction between boys unable to achieve socially acceptable status; together these boys attempt to develop new norms such that status may be obtained within their gang. Cloward and Ohlin[18] also saw lower class delinquency as a shared response to problems of adjustment. In their view, the cause of delinquency is Merton's concept of anomie (a lack of legitimate means to achieve success goals) and the type of delinquency depends on differential opportunities to learn, and the availability of, particular illegitimate means.

The various hypotheses differ in the extent to which they regard criminality as reactive or adaptive to social stratification, as an expression of frustration on the part of people unable to achieve social status or as an alternative way of achieving such status.

2. The Sociopsychological Explanations

"Social psychology is the study of human behavior based on the assumption that significant portions of conduct are the result, directly or indirectly, of what other human beings have done to us and for us."[19] All the sociopsychological explanations of criminality are based on interactionist theory; they attribute criminality to the process of mutual action and reaction in our lives. They differ only to the extent that they emphasize different aspects of this process.

a. The Symbolic-Interactionist Variety

The symbolic-interactionist perspective locates the causes of human behaviour in thought (which is regarded as a product of interpersonal communication): how we act is determined by what we believe and how we interpret the reality around us.

The first major application of symbolic-interactionist assumptions to the explanation of crime was Sutherland's[20] theory of "differential association". He maintained that criminal behaviour, like any other behaviour, is learned in a process of interaction in society; the learning of criminal behaviour includes both the techniques and the motives and attitudes necessary to permit a person to commit a crime; the

specific direction of motives is learned from definition of the legal codes as favourable or unfavourable; a person becomes delinquent because of an excess of definitions favourable to violation of the law over definitions unfavourable to violation of the law. The notion of culture conflict is implicit in this theory. The proposal that competing attitudes towards the law result from differential association rests on the assumption that the conduct norms incorporated in the criminal law are not shared by all members of the society.

A more recent and currently popular approach to the explanation of crime is the "labelling" perspective. Labelling theorists are concerned with the interactional processes that result in the attribution and acceptance of roles. They attend not only to the individual's reaction to society, but also to society's reaction to the individual. Labelling theory has broadened the classical approach to criminology by asserting that explanations of criminal behaviour must take into account the processes by which certain behaviours and individuals come to be defined as criminal and the individual and societal reactions which result from such definitions. Nettler[21] explains the labelling hypothesis as follows: "Crime is socially defined and criminals are socially "produced" in a process which allows majorities to apply labels to minorities and which, in many cases, permits majorities to enforce the consquences of this labeling. As a result, the "labeled" person - the stigmatized person - may be unable to act in any way different from the role ascribed to him."

Schur[22] comments that labelling processes which con-

tribute to deviance outcomes operate on at least three levels of social action - collective rule-making, interpersonal reactions, and organizational processing. With reference to the first such level, Becker[23] stressed that whether an act will be defined as deviant depends on the reaction of others to the commission of the act. Labelling theorists assert that those acts which have been defined as crimes have no intrinsic quality which sets them apart from other behaviour; explanations of crime must, therefore, take into account the same dynamic processes which produce any other type of deviant behaviour. Tannenbaum[24] was one of the first sociologists to be concerned with the operation of the labelling process at the level of interpersonal reactions; he referred to the process as "the dramatization of evil". He argued that there is a gradual shift from the definition of specific acts as evil to a definition of the individual as evil; society reacts to delinquent acts by re-defining the perpetrator as a delinquent, and this in turn causes the individual to re-define his self-concept; as a result, he is separated from his peers and associates with other delinquents; this leads to further delinquent acts, and thus the application of the label becomes both self-fulfilling and self-perpetuating. Proponents of the labelling perspective refer to the initial act which leads to the application of the label as "primary deviance" and to the subsequent acts which result from the application of the label as "secondary deviance". The operation of the labelling processes at the third level of organizational processing has led criminologists to investigate the operation of the criminal justice

system; in particular, the discretion which may be exercised at the various stages of the process in regard to the application of labels and enforcement of laws.

b. The Control Variety

Control theory is based on the observation that man's behaviour is controlled by the training he receives; the emphasis is on how this training occurs in the social environment.

Reckless and his colleagues[25] advanced one version of control theory under the title of "containment theory". They asserted that a person is contained against the allure of crime by two types of control:

1. Outer Containment - social pressures to obey the norms of one's group, exerted through training in roles, affiliation with a community and a tradition, and hence through the development of a sense of identity and belonging;
2. Inner Containment - self-control resulting from moral training and indicated by a healthy self-concept, goal-directedness, a realistic level of aspiration, the ability to tolerate frustration, and an identification with lawful norms.

Another version of control theory is based on the assumption that criminal behaviour results from defective social training in lawful standards of conduct. Psychologists have shown that individuals differ in their amenability to training, and that the quality of the training that an individual receives depends on the pattern of rewards and punishments by which he has been conditioned and the models and associates with which he has been reared. Proponents of the control

hypothesis hold that delinquents have been defectively reared; in particular, that they have lacked adequate models of lawful conduct. For example, Jaffe[26] found family value confusion to be a factor in generating delinquency. He explained that where value confusion exists among members of his family, a youngster is often forced to find his way by processes of trial and error; he cannot benefit fully from the experience of others. Furthermore, exposure to indefinite or inconsistent values results in faulty ego and superego development and leaves the individual with an ineffective behaviour and impulse control system; "the lid is off the id" and acting out becomes the rule; as a result, delinquency may occur.

Towards a Synthesis of Explanations

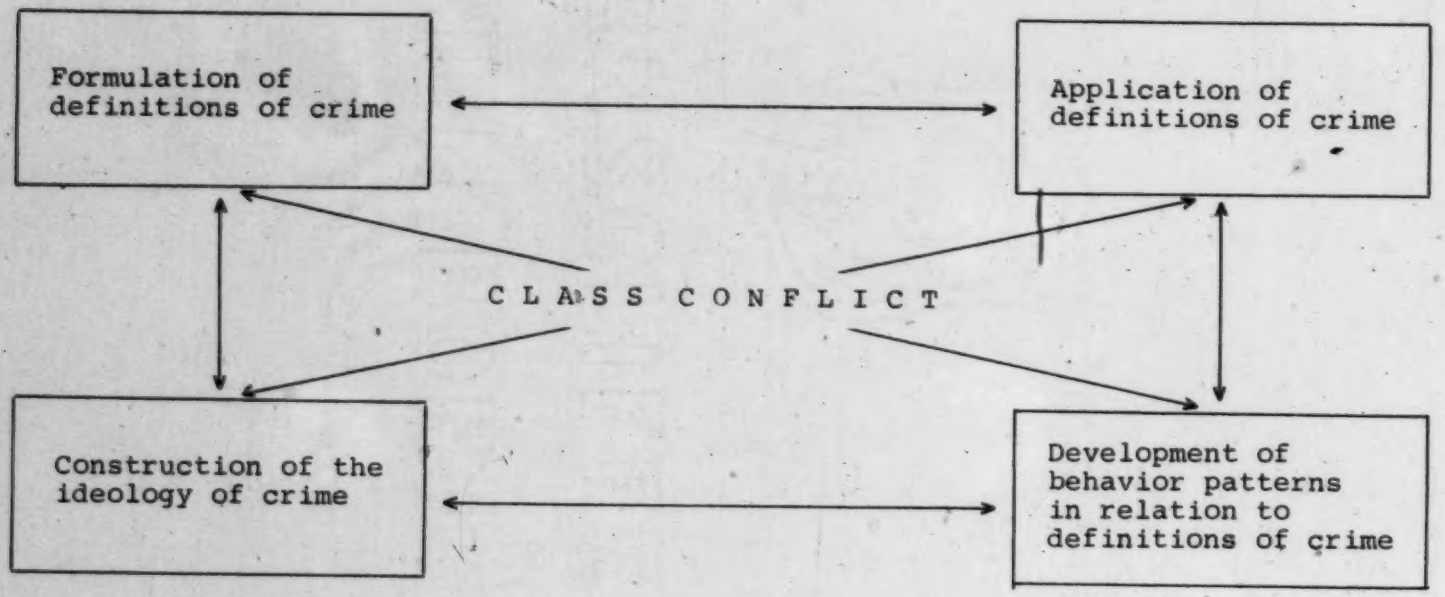
"There is no sociological theory of crime and criminality that can adequately deal with all crime and criminals."[27] Most of the explanations of crime which have been advanced have been criticized, in many cases, either because they appear to conflict with other theories or because they are invalid in regard to particular types of crime or criminals. This has led a number of criminologists[28] to abandon the search for a scientific theory and to resort to a listing of criminogenic factors. Whilst it is accepted that no single theory will explain all crime, it is submitted that the importance of attempting to integrate findings into abstract theories should not be overlooked. Once it is accepted that crime is not a special category of behaviour and that its explanation entails the explanation of all human behaviour, many of the

problems with the existing theories disappear. It becomes clear that they attend to different aspects of the same thing; they should be regarded, not as competing explanations of crime, but as partial explanations of behaviour which differ in emphasis rather than content.

Quinney's[29] "theory of the social reality of crime" purports to integrate the diversity of theoretical criminology into a single theory of crime. He asserts that the social reality of crime (that is, what is regarded as the amount and character of crime at any given time) is constructed by the formulation and application of definitions of crime, the development of behaviour patterns in relation to these definitions, and the construction of an ideology of crime. The theory is in the form of a system of interacting developmental propositions and is shown in synoptic form in Diagram 4. The essence of the theory is that the criminal law is formulated and applied by agents of the dominant class in capitalist society in accordance with the interests of that class; the processes of interaction in society lead to the development of differing behaviour patterns but only the behaviour patterns of the dominant class are represented in the formulation and application of the definitions of crime; however, the whole society comes to regard crime in terms of the conceptions of the dominant class. It is submitted that this theory is essentially a particular application of symbolic-interactionist assumptions. Although it explains the development of a society's perception of crime, its explanation of criminal behaviour is founded on a single theory - class conflict.

Diagram 4

THE SOCIAL REALITY OF CRIME


Formulation of definitions of crime
Application of definitions of crime
CLASS CONFLICT
Construction of the ideology of crime
Development of behavior patterns in relation to definitions of crime

(Quinney (i) p.387)

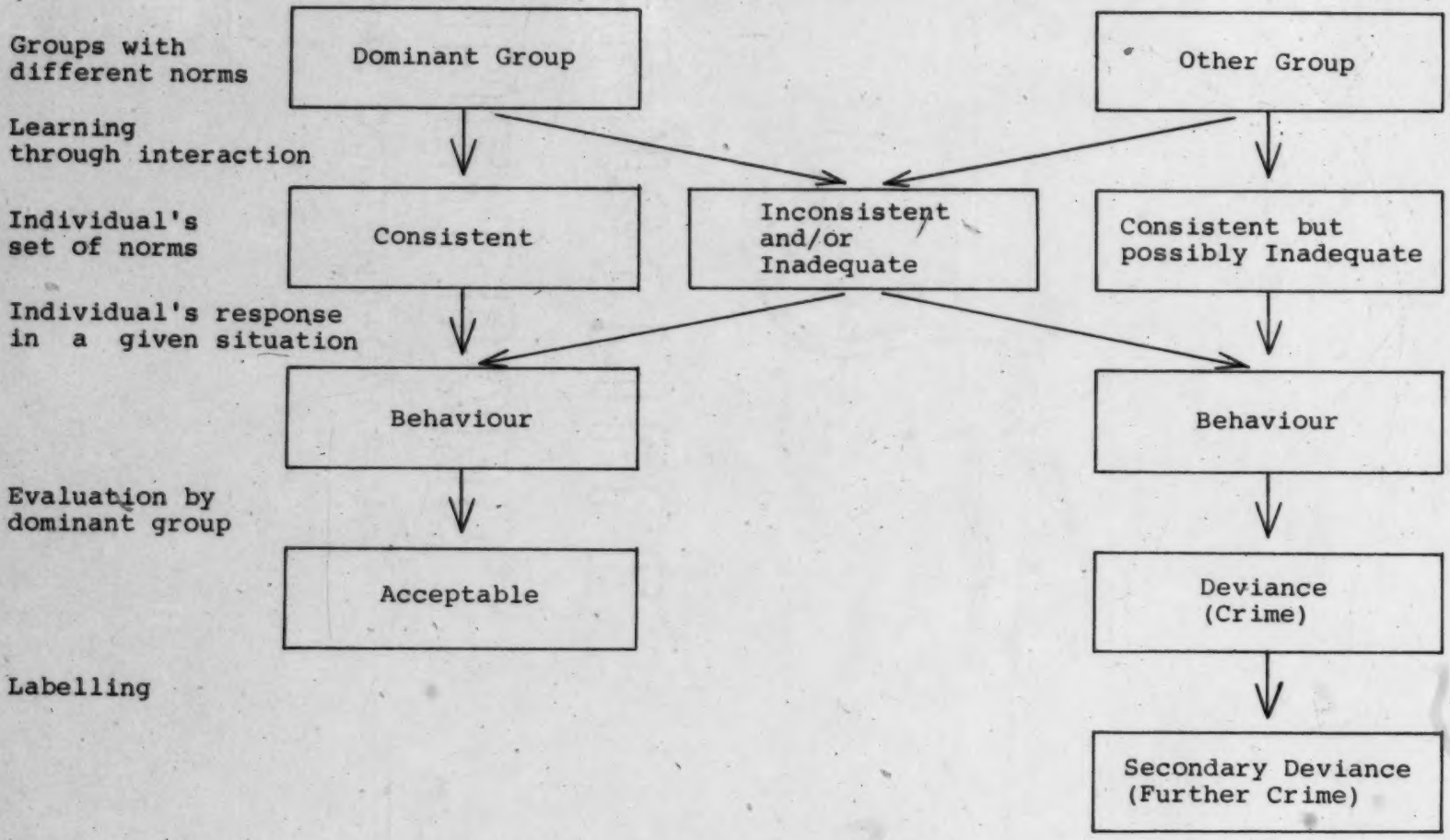
Without going so far as to propose a single theory of crime, it is submitted that one common feature can be discerned in the existing explanations which enables them to be combined; used together they go a long way towards explaining criminal behaviour. Nettler[30] identifies the fact that the sociological explanations of criminality are unanimous in attributing criminogenesis to something in the ordering of relations among people; when these arrangements have some regularity and persistence they define a "culture". "The governor of crime, as well as its generator, is culture. Every "factor" that is selected for attention as possibly criminogenic is embedded in a culture and reflects that culture. Every current explanation of crime looks at some facet of culture as central." The strictly sociological explanations are all rooted in the conflict of conduct norms which exists in a complex society; the subcultural variety emphasizes the conflict which results from the "horizontal" divisions within such a society (that is, the co-existence of groups with different cultures, particularly ethnic groups), while the structural variety emphasizes the conflict which results from the "vertical" divisions within such a society (that is, the disintegration of its culture through stratification into social classes). The sociopsychological explanations focus attention on the interactional processes which produce the conflict of conduct norms and which give the conflict its significance; the symbolic-interactionist variety stress the influence of thought on behaviour, while the control variety stress the influence of training on behaviour. Viewing the different types of explanation together,

we obtain a composite picture of criminogenesis in a heterogeneous society. This is illustrated, albeit in rather simplistic form, in Diagram 5.

In a heterogeneous society there are groups of people whose norms differ from those of the dominant group. The set of norms which an individual acquires depends on his neurophysiological constitution (persistent differences in temperament, tempo, and cognitive capacity which affect his amenability to learning), the quality of the training he receives, and the content of the lessons he is taught. Since learning occurs through interactional processes, the quality of his training and the content of the lessons depend on the norms of the groups with whom he is reared and with whom he associates. If these groups share the norms of the dominant group, the individual is likely to internalize a consistent set of norms which should govern his response in any given situation and result in socially acceptable behaviour. If the individual's primary groups share norms which differ from those of the dominant group, the individual is again likely to internalize a consistent set of norms which should govern his response in any situation to which his norms pertain: but behaviour in accordance with his norms is likely to be defined as deviant by the dominant group; furthermore, contact with the dominant group may result in situations which are not governed by his norms, and in such situations behaviour which is defined as deviant by the dominant group is again a likely outcome. If, as a result of inter-group contact, the norms of the individual's primary groups are themselves inconsistent

Diagram 5

CRIMINOGENESIS IN A HETEROGENEOUS SOCIETY



and/or inadequate, he is likely to internalize inconsistent and/or inadequate norms which will cause or permit different responses in different situations [it is submitted that the response in a particular situation will depend on such factors as the relative strength of competing norms, his personality, and opportunity]; in any event, a deviant response is at least as likely as a socially acceptable response. It is essentially the norms of the dominant group which are incorporated in the criminal law so that deviance from their norms may constitute crime. Labelling processes may result in further deviance from the norms of the dominant group including further crime.

When this framework is applied to aggregates of individuals it appears to have validity in explaining differences in the crime rates of different groups within a society, whilst at the same time accounting for individual differences within those groups.

Explaining Aboriginal Criminality

There appears to have been little attempt to relate the general theories of criminogenesis to the specific issue of aboriginal criminality. Canadian studies on the topic of "Natives and Justice" have tended to focus on the dimension of action rather than explanation; on what should be done to solve the problem of Native crime, rather than on its causes. Culture-conflict and alienation seem generally to have been assumed to be the underlying causes, but without any detailed analysis. Lautt,[31] having reviewed the existing literature, concludes that what is required is not only holistic research, cross-disciplinary collaboration, and input from Native and non-Native researchers who have been in communication with each other, but exploratory research that clarifies rather than applied research which directs. The explanation of African crime in Zimbabwe is virgin ground.

It is important to clarify exactly what it is about aboriginal criminality that is being explained. As has been stated, statistical analysis indicates differences in the level and nature of recorded crime between the aboriginal peoples and the other peoples of Canada and Zimbabwe.[32] These differences in crime rates obviously require explanation, but may be explicable with reference to the operation of the justice process itself. They do not necessarily reflect any differences in actual behaviour. Many of the sociological theories of criminogenesis represent attempts to explain proven or assumed differences in patterns of actual criminal behaviour. Unless some such differences can be

established in regard to Canada and Zimbabwe, these theories will have no relevance for this purpose. However, it is submitted that the theories remain relevant as explanations of criminal behaviour in general, which may serve to reveal particular causes of criminal conduct on the part of the aboriginal peoples.

1. Explaining Aboriginal Crime Rates

To what extent can the disproportions in aboriginal crime rates be attributed directly to the operation of the criminal justice process itself? The labelling perspective leads us to focus our attention on the ways in which the agencies of social control influence the level and nature of criminality. Any discrimination in the operation of the criminal justice system will obviously have a direct impact on the statistics.[33] Discrimination against particular groups may arise from: a. differential criminal legislation; b. differential enforcement of the criminal law; and c. differential access to mechanisms and services designed to achieve justice. In the case of the aboriginal peoples of Canada and Zimbabwe such differentials could result from a racial bias in the administration of justice since in both countries the personnel involved in the system are generally non-aboriginals. They could also result from a class bias since the aboriginal peoples of both countries are predominantly of lower socio-economic status.[34]

a. Differential Legislation

As has been mentioned, in both Canada and Zimbabwe

there have been instances of discriminatory legislation creating offences which could only be committed by the aboriginal peoples.[35] Certainly in the case of Zimbabwe, a number of such offences were extant at the time the statistics were compiled and probably contributed to the disproportions. But, in general, the current criminal laws of Canada and Zimbabwe apply equally to all the peoples living in those countries irrespective of race or social class.

b. Differential Enforcement

Although the same rules apply to everyone, rule enforcement is not automatic and the discriminatory exercise of discretion by the agents of the criminal justice process may well be an important reason for the disproportions in both the Canadian and the Zimbabwean statistics. In this regard, Jefferson[36] points out that many Canadian Natives claim that they are more likely to be arrested, more likely to plead guilty or be found guilty, more likely to be incarcerated, more likely to be imprisoned in maximum security, and more likely to be released on Mandatory Parole than non-Natives. To what extent can such claims be substantiated?

"The fact that criminal conduct must be socially perceived and socially processed before it becomes part of the official record has stimulated studies of the differential selection of offenders, particularly juveniles, for arrest and referral to court."[37] Most of the existing studies into the exercise of discretion by the police have been conducted in the United States of America and it is obviously dangerous to assume that the findings can be applied directly

to Canada or Zimbabwe. But, in the absence of empirical research on the matter in those countries, it is submitted that implications can be drawn from a review of the American research.[38] The principal finding of a study conducted by Black and Reiss was that the police operate primarily in a "reactive" rather than a "proactive" manner. The majority of cases handled by the police originate with reports from the public rather than as a result of police surveillance. No evidence of racial or class discrimination in attending to reported crime was found, except that the police were observed to be more vigilant when complaints about serious offences were made by "white-collar" citizens than when they were made by "blue-collar" citizens. These findings indicate that, in most cases, it is the public rather than the police who determine initial police involvement, and that it is the subsequent exercise of police discretion once on the scene that should be the main focus of attention. It comes as no surprise, therefore, to find that most of the existing studies of police discretion focus on the factors which influence police disposition decisions rather than on the factors which operate at the level of surveillance and detection. These studies do not give evidence of any striking extralegal bias in police handling of juvenile offenders. Although Goldman found ethnicity to be a factor which influenced the decision of the police in the disposition of minor offences,[39] Nettler points out that Goldman failed to control for the relation between ethnicity and previous convictions. Terry's analysis revealed that the

severity of treatment of juvenile offenders (by the police, probation department, and juvenile court) did not vary with race or socioeconomic status, when the seriousness of their offences and their records of previous offences were considered. Similarly, although McEachern and Bauzer found a multiplicity of factors to be statistically related to police disposition decisions, they too found ethnicity not to be a significant variable. Hohenstein's analysis revealed that the three major factors determining police disposition decisions were the victim's attitude, the juvenile's record, and the gravity of the reported offence, and that, when these factors were considered, race made no difference. By contrast, Thornberry found that, although he controlled for the legal variables of gravity of offence and number of previous offences, the racial and socioeconomic differences did not disappear. Blacks and low socioeconomic status subjects were more likely than whites and high socioeconomic status subjects to receive severe dispositions (from the police and the juvenile court). But he does acknowledge that he did not control for other variables that might have legal relevance in cases involving juveniles, such as demeanour of the youth, the quality of his home, and the attitude of the victim. The implication that there is no strong extralegal bias in police disposition decisions, taken in conjunction with Black and Reiss's finding that most offences come to the attention of the police as a result of complaints from the public, leads Nettler to conclude that there is no evidence of any systematic bias in the official statistics.

"The best answer seems to be that official records in democracies reflect the operation of a judicial sieve... In short, what counts is those crimes for which the public puts pressure on the police to make arrests."[40]

However, it is clear that not all the crimes recorded in the statistics come to the attention of the police as a result of reports from the public. With regard to certain types of crime which the public has little or no interest in reporting to the police, for example crimes without victims and many of the less serious offences such as traffic violations, most of the cases that do come to the attention of the police are likely to result from police surveillance and detection activities. In carrying out these activities, the police are evidently in a position to exercise a wide measure of discretion, both as to the focus of the activities and as to the action taken against detected offenders. Discrimination in the exercise of this discretion would have a significant bearing on the statistics for these types of crime. Piliavin and Briar's study is relevant in this context as it involved observation of policemen on patrol. They found that the majority of police encounters with juveniles involved minor offences, and that in these cases youths whose "group affiliation, age, race, grooming, dress, and demeanor" signified to the police that they were confirmed delinquents and disrespectful toward the police tended to receive the more severe dispositions. They also found that these factors of appearance and demeanour, in conjunction with police crime stat-

istics, led the police to concentrate their surveillance activities in areas frequented or inhabited by Negroes and to accost Negro youths more often than others. It is submitted that "discriminatory" practices of this nature may be an important explanation for higher arrest rates among the aboriginal peoples of Canada and Zimbabwe. In regard to Canadian Indians, Hagan points out that an indication of this possibility is provided in the following extract from a survey prepared by the Canadian Corrections Association:

> "It is obvious that the Indian people, particularly in the cities, tend to draw police attention to themselves, since their dress, personal hygiene, physical characteristics, and location in run-down areas makes them conspicuous. This undoubtedly results in more frequent arrests. The feeling is widespread among the Indian and Metis people that the police push them around and arrest them on the slightest provocation."[41]

In Zimbabwe, the writer's own observations of police vehicle-check activities indicated the existence of "discriminatory" practices based on appearance. The police were more likely to stop and check the vheicles of Africans, juveniles, and persons driving older cars and tended to "wave-through" adult Europeans driving newer cars.[42] Furthermore, limited observation of both the Edmonton City Police in Canada and the British South Africa Police in Zimbabwe[43] tended to confirm the influence of demeanour in disposition decisions once a minor offence had been detected; offenders who were polite and apologetic were less likely to be ticketed than those who were recalcitrant. Although discrimination by the police may only affect the crime rates for a relatively

narrow range of minor offences detected as a result of police patrolling, analysis of the statistics indicates that it is largely these kinds of offences which are recorded in respect of the aboriginal peoples.

The possibility of discrimination at the subsequent stages of the justice process also merits attention. Prosecution agencies exercise a wide measure of discretion and any prejudice on their part would have a direct impact on conviction statistics. The writer considers it unlikely that discrimination on the basis of race or class significantly affects court findings or sentencing. However, the possibility of a bias arising from a divergence between the values and beliefs of the judge and those of the accused cannot be ruled out. In this connection, a study into sentencing by Hogarth[44] reveals that Canadian magistrates usually come from professional, Protestant families and that they interpret the world selectively in ways consistent with their personal motivations and subjective ends. The same is probably true of Zimbabwean magistrates most of whom are of European descent. Any resultant bias in the exercise of judicial discretion would have a direct impact on conviction and incarceration statistics. But the findings of the few empirical studies into this matter are inconclusive.[45] Discrimination by such agencies as parole boards could have an impact on recidivism rates. Further research is clearly required before any firm conclusions can be made concerning the extent to which differential enforcement accounts for the disproportions in the Canadian and Zimbabwean criminal

statistics.

c. Differential Access

There are some indications that differential access to mechanisms and services designed to achieve justice may be a partial explanation for the disproportions in the statistics. For example, one of the overwhelming conclusions which emerged from the National Conference on Native Peoples and the Criminal Justice System held in Edmonton in 1975[46] was that Natives in trouble with the law do not have equal access to most of the regular services offered to other suspects, convicted offenders, and ex-inmates. Many of the aboriginal peoples of both Canada and Zimbabwe live in remote areas and centralization of justice services may result in reduced access to facilities such as legal counsel, legal aid, probation, and parole. Although empirical research has been conducted in Canada into the possibility of racial bias in the plea negotiation process, no clear conclusion emerges. Hagan,[47] using Alberta data, found no direct link between race and alteration of the charge, nor between race and retaining defence counsel or the initial plea, and he concluded that Native offenders benefit from the negotiation process as do non-Native offenders. However, in a subsequent study Wynne and Hartnagel,[48] using data from Edmonton courts, found that race is an interacting variable in determining access of an offender to plea bargaining, and its effect is modified by variables such as previous arrest record, repetitious counts, seriousness of

offence, and presence of counsel. Misunderstandings resulting from language barriers may also contribute to aboriginal crime rates. An important reason for the disproportions in the imprisonment statistics may be the relative poverty of the aboriginal peoples. Analysis of the statistics for each country reveals that a large and disproportionate number of aboriginal people are imprisoned for non-payment of fines. Although fines are supposed to be equated to means, it will be recalled that the survey carried out by the Rhodesia Prisoners' Aid Society gave some indication that a high proportion of persons committed are unable to pay their fines.[49] A further possibility is that attitudinal differences lead to more aboriginal offenders opting for imprisonment in preference to paying their fines.

It appears likely that discriminatory factors within the criminal justice system are a significant reason for the racial differentials in the crime rates of Canada and Zimbabwe. A lot more research would be required before any conclusion could be made regarding the extent to which these differentials also reflect differences in the level and nature of actual criminal behaviour. The statistics themselves cannot be regarded as establishing the existence of such differences. But some indications of whether or not any differences in the patterns of actual criminal behaviour are likely to exist may emerge when the specific applicability of the general theories of crime causation to the aboriginal peoples is considered.

2. Explaining Aboriginal Criminal Behaviour

Although there may be racial differentials in total crime rates or in the rates for specific offences, crime committed by aboriginal peoples does not constitute a special category of behaviour which can be explained in terms of a special theory. In contemporary society, the circumstances of individuals of aboriginal origin and the types of crime they commit are as diverse as those of non-aboriginals. Furthermore, there is no evidence of biological differences in the behavioural potential of different racial groups. However, it is submitted that, whilst the processes involved in criminogenesis are the same for all peoples, particular causes may pertain more strongly to people of one racial group than another. The particular applicability of the general theories of criminogenesis to the aboriginal peoples of Canada and Zimbabwe will now be considered.

a. Subcultural Theory

In view of the fact that a Western type normative order has been super-imposed on the traditional normative order of the aboriginal peoples of Canada and Zimbabwe, an obvious hypothesis is that the differences between the behavioural prescriptions of the dominant culture and those of the aboriginal subculture explains aboriginal criminality.

The first question which arises is whether there is any such thing as an aboriginal subculture. Nagler[50] points out that Canadian Indians do not constitute a trad-

itionally defined ethnic group or cultural minority. They do not share a common cultural tradition; their lifestyles vary widely according to their geographical and traditional backgrounds and, as a result, they lack any strong sense of group identity; furthermore, they have not been assimilated into the larger society to the extent that many minority groups have. "What are considered to be the distinguishable characteristics of native cultures are in essence abstractions of significant cultural and social forms which have been observed among segments of the Indian population." Moreover, the traditional value systems observed among the Indians are not unique to the Indian people. "The same values and cultural practices that have been described as specific to the Indians can be found among tribes of the Amazon, Africa, and Asia, and are typical of any tribal people who have chosen not to assimilate or else who have not had the chance to adopt the patterns inherent in modern industrialized society." It is therefore submitted that perceived characteristics of this nature should be regarded, not as identifying any particular culture, but rather as common characteristics of tribal cultures. Although some of these perceptions of tribal culture may be historically inaccurate in regard to particular Indian or African tribes, members of the dominant Western culture in both Canada and Zimbabwe have tended to stereotype all the aboriginal peoples of each country in terms of such perceptions and to treat them accordingly. It is likely that this labelling process has resulted in many aboriginal people changing

their self-concept and behaving according to the expectations of the dominant culture. Thus it is submitted that it is possible to identify patterns of behaviour common to aboriginal subcultures and to compare these with the behavioural prescriptions of Western culture. Any conduct norms associated with the traditional lifestyle of the aboriginal peoples which still persist are liable to produce a conflict situation in contemporary society. But the criminogenic effect of conflicts between specific tribal customs and contemporary criminal laws should not be over-emphasized. Many of these customs were restricted to particular tribal groups in the first place and many are no longer observed even by the descendants of those groups.

To what extent do the conduct norms of aboriginal subcultures conflict with the behavioural prescriptions of Western society? The principal contrasts between the traditional normative order and the Western normative order have already been identified.[51] Anthropologists and sociologists have described numerous fundamental differences between tribal cultures and Western culture and only some of the more common examples need be examined to illustrate the high potential for norm conflict in contemporary conditions. The most pervasive feature of tribal cultures appears to be their communal orientation; by contrast Western culture is nationalistic on the structural level, individualistic on the social level, and capitalistic on the economic level. The nationalistic structure of Western culture, in conjunction with the increased range of activities in which its

members are involved, necessitates more extensive and complex rules of conduct than existed in tribal societies. An obvious consequence is that many activities which were freely engaged in by the aboriginal peoples, such as hunting and fishing, are now governed by rules. A further consequence is that rules prescribe or govern activities which were unknown to the aboriginal peoples, examples being rules requiring payment of taxes and rules governing commercial transactions such as hire-purchase. The tribal emphasis on the community rather than on individual rights affected a number of social concerns. Kinship was both more extensive and more important than in Western society; mutual aid was the norm and sharing of good fortune was expected of the individual. In modern conditions such norms could clearly result in conflicts, as where an aboriginal individual expects relatives living in the urban environment to provide free accommodation or to share their earnings, or believes that he can make use of someone else's property without permission. In tribal societies real property was generally held communally and the absence of a concept of individual ownership of land could result in conduct prohibited by Western society such as trespass and poaching. The capitalistic orientation of Western culture is foreign to tribal societies, the subsistence economies of which were based on agriculture or on hunting and fishing rather than on industry and commerce. Zentner[52] contrasts what he refers to as "the pre-machine ethic" with "the Protestant ethic" and asserts that the distinction primarily rests upon

differences in historic conceptions of the supernatural which are in turn correlated both with different stages of sociocultural development and with differences in time-space values and perspectives. He asserts that the Protestant ethic places every man in direct and indirect competition with every other man to achieve future salvation, whereas salvation for a member of the pre-machine ethic is a personalized and non-competitive matter which takes place in the present. In Western society accumulation of wealth by an individual is a means of improving his social status whereas in tribal society vertical mobility was governed by age and ascriptive status and work and saving in order to accumulate personal wealth were not part of the system. The potential for conflict between behavioural prescriptions associated with these fundamental cultural differences should be apparent.

How does culture-conflict arise in Canada and Zimbabwe? "An interpenetration of conflicting norms can occur in three ways: (1) codes clash on the border of contiguous cultural areas; (2) colonization brings imposition of one group's criminal law upon another; (3) one cultural group migrates to another area."[53] All three of these factors would appear to be operative with regard to the aboriginal peoples of Canada and Zimbabwe. In the historical context the applicability of the second factor has already been demonstrated.[54] If assimilation of the aboriginal peoples into Western society had occurred this factor would no longer be significant. But, although this appears to have been the

ultimate goal of colonial policy, the interim practice has been to reverse effect and segregation has been the outcome to date. In both countries the aboriginal peoples have been set apart from the dominant culture as a result of differential treatment in a variety of spheres and, as Nagler[55] comments, it is this separation which has enabled them to maintain at least some aspects of their original culture and identity. In Canada, many of the Indian people live on Reserves and, although there has been considerable replacement of Indian material culture with Western goods, techniques, and technology, Vogt[56] points out that the sociocultural system is likely to be undergoing change at a much slower rate. In Zimbabwe, many of the African people live in Tribal Trust Lands and, especially in the more remote areas, they maintain their traditional lifestyle to a great extent even as regards the material aspects. The continued existence of aboriginal subcultures in distinct geographical areas within each country reveals the significance of all three factors mentioned above. "The laws and norms of white society have been imposed on the Native Peoples; but also on the part of both groups there is a lack of understanding of the laws and customs of the other, so that neither really knows what it is in the code of the other that is being transgressed. Thus Native Peoples may act in a way that is acceptable in their society without realizing that what they've done is an offence in the eyes of the whites; and, in turn, the whites do not realize that to the Indian, his act is perfectly acceptable."[57] Segregation has obstructed

internalization of the imposed norms by the aboriginal peoples, making clashes between behavioural codes and rejection or misunderstanding of many of the imposed norms inevitable. At the same time, disruption of the traditional normative order has weakened the holding power of the traditional norms, resulting in that state of deregulation of behaviour which Durkheim called anomie. In the contemporary context this state of affairs is accentuated by the widespread migration of the aboriginal peoples from the rural Reserves and Tribal Trust Lands to the cities and towns.

Numerous studies in Canada and the U.S.A. have focused on patterns of acculturation among the Indian peoples and many of the concepts and findings which have emerged appear to have relevance in explaining deviance and crime on the part of the aboriginal peoples of Canada and Zimbabwe. Empirical research has confirmed the existence of varying degrees of social disintegration within the Reserve communities themselves.[58] The difficulties of adaption experienced by those Indians who leave the Reserves and attempt to participate in Western society would appear to be even more significant. The conflicting pressures to which they are subjected are illustrated in a cartoon by Duke Redbird, a Canadian Indian, which is reproduced as Diagram 6. The sociological concept of the marginal man is relevant in this context. "In brief, the marginal man is a person who participates in two different cultures without being totally committed to, or accepted by, either. Tension and maladjustment is often the result of bicultural loyalties...

Diagram 6 THE ADVENTURES OF CHARLIE SQUASH

by Duke Redbird

When I was a youngster on the reserve, I was a happy little savage. I was the kind of Indian boy everybody reads about in books. I fished hunted, played, and danced.

But my parents told me I had to grow up. My minister told me I had to face my responsibility. My teachers said I must prepare to face the modern world.

So I stored away the breechcloth, my bows and arrows, and my dancing costumes. I bought all kinds of books and studied. Like a mad Indian to be a success in the big outside world.

Then I graduated from high school and I left the reserve to find my place in the world. People didn't believe I was an Indian, because I acted just like they did. I didn't even wear feathers.

When I visited the reserve my parents were mad because I sounded like a White man. My minister was mad because I didn't praise the traditions of my people, and the teachers were mad I didn't get a job with the National Indian Council.

So I studied Indian lore like mad. I learned all I could about the North American Indians and got a membership with the National Indian Council.

Now my friends at work complain because I am always pushing the Indian cause. They say I should try and blend with the White society, and quit lobbying to make Indians different and independent of the rest of society. So I quit work.

But I couldn't get a job. I took what little money I had and made some Indian war bonnets. They sold like mad. So I paid another Indian to make them for me, and now I spend my time fishing, hunting and dancing on the reserve.

Everybody should have let well enough alone.

(Reproduced from Bowles, Hanley Hodgins, and Rawlyk pp 46-47)

The American Indian, especially the younger generations, have become "marginal men"."[59] In a study of Indian adjustment patterns within the urban areas of Toronto, Ottawa, and Montreal, Nagler[60] found that, although the process of transition is similar in many respects to that of other minority groups, there are also differences arising from the fact that Indians are not really members of either a distinctive cultural, racial or ethnic group; however they are labelled as a group and there are signs that a group identity is beginning to emerge. He identified six distinctive groupings of Indians in the cities which emerged as different patterns of adaption to the urban environment: white-collars, blue-collars, transitionals, urban users, seasonal workers, and vagabonds. The lack of a strong sense of group identity has probably made adaption even more difficult for Indians than for other minority groups. Lautt[61] points out that some Natives who migrate to the cities merge totally into white institutions; others merge into the white economy, but retain friendship networks with the urban Native community; and some appear to be striving for institutional completeness, a condition whereby "...the (native) community could perform all the services required by its members. Members would never have to make use of (white) institutions for the satisfaction of any of their needs...(Breton, 1964)." "In attempting to become urbanized, Indians are adopting some of the behavioural requirements of urban life, but their activities are consistently being subjected to ambivalent pressures because of the influence of the traditional

and rural backgrounds."[62] There is likely to be some breakdown of the migrant's traditional norms with only gradual or partial replacement by Western norms so that conflicts will arise in particular situations; in addition, the migrant is faced with the unreachable goal norms, discontinuous norms, impotent and sanctionless norms, evasive norms, and stressful norms which are associated with Western society. "Norm breakdown, conflict, discontinuity, impotence, and stressfulness create the conditions that eventuate in large-scale deviancy."[63] In this connection, it will be recalled that the survey conducted by the Rhodesia Prisoners' Aid Society revealed that 49.6% of those admitted to Salisbury Central Prison during March and May 1973 had arrived in the city of Salisbury from the rural Tribal Trust Lands less than a year before their admission to prison.[64]

b. Structural Theory

The assertion has already been made that the aboriginal peoples of Canada and Zimbabwe are predominantly of lower socioeconomic status,[65] and it seems probable that this condition is largely attributable to the culture-conflict which has just been discussed. "...The value of punctuality, saving, future orientation, and the work ethic serve to maintain a vast separation between Indians and the rest of North American society. These factors combined with prejudice have been instrumental in effecting their low socio-economic position."[66] Nagler[67] comments that, although the Reserve communities were theoretically intended to permit Natives to live

according to their traditional patterns of life, in practice, most Reserve areas provided only minimal resources which made a viable independent existence impossible. Bureaucratic control of the Reserves and the negative effects of the social welfare system have been identified as further factors contributing to the poverty of Indians in the rural areas. For those who seek relief by moving to the urban areas, increased contact with Western society combined with the difficulties of adaption often serve to make their relative poverty even more apparent.

Application of the structural theories leads to the hypothesis that the position which the aboriginal peoples occupy in contemporary society is itself an explanation for deviance and crime on their part. In regard to American Indians today, some writers have suggested that this is the most important explanation for their problems and has tended to be obscured by over-emphasis on persistent cultural differences.[68] Merton's assertion that persons lacking legitimate means to success may strive for material goals by deviant means or may reject the goals themselves seems particularly pertinent in regard to the aboriginal peoples of Canada and Zimbabwe. There are indications that many of them, particularly those who migrate to the urban areas, have acquired Western success goals, but lack the training needed to attain such goals or find their aspirations blocked by racial prejudice. "It is frequently the case with the Native Peoples that, especially when they first come to the city, they see the better standard of

living that the majority of the white population enjoys and feel that they also are entitled to this standard. However, the majority of Native Peoples do not have the education or skills to get high salary work. Discouraged by their inability to get or keep good jobs with good wages, a high proportion turn to petty crime."[69] In a study of American Indians, Reasons[70] found behavioural disorders such as alcoholism and chronic hitting-out to be most common among those who aspire to white-dominated positions and status without adequate means to fulfill these aspirations. Whilst such patterns of deviance in response to frustration are not limited to aboriginal peoples and are exhibited by most lower socioeconomic groups, it is considered that the anomic condition of the aboriginal peoples increases the likelihood of their responding in this manner. It is submitted that individual reaction to frustration depends on the set of norms which the individual has acquired; the norms of many aboriginal individuals are likely to be inconsistent or inadequate allowing them to resort to deviant means to achieve success goals or to reject the goals and to indulge in deliberate deviant behaviour as an expression of frustration.

c. Symbolic-Interactionist Theory

The sociopsychological explanations focus on the interactional processes which produce norm conflict and which give the conflict its significance. Sutherland's assertion that a person becomes delinquent because of an excess of definitions favourable to violation of the law over definitions unfavourable to violation of the law appears to

have relevance in explaining high rates of delinquency amongst the aboriginal peoples of Canada and Zimbabwe. "Many of the people of Indian and Eskimo descent are alienated from the economic, social, and political structures [of mainstream Canadian society]. This alienation is bound to be reflected in their attitudes towards the law. In their Kamsack study, Shimpo and Williamson noted that the attitudes of Indians towards the law could not be understood without, at the same time, considering their attitudes towards the treaties and the Indian Act... This study, and others, indicates that the abrogation of treaties and laws by the non-Indian majority encourages the questioning, in Indian eyes, of much of the White people in general."[71] Given the existence of negative attitudes towards the law and a high level of criminal conduct amongst the aboriginal peoples in general, interactionist theory suggests that an individual of aboriginal origin is likely to learn the motives and attitudes as well as the techniques necessary to permit him to commit a crime.

The applicability of the labelling perspective in explaining aboriginal criminality should already be apparent. Much of the foregoing discussion has related to the fact that it is the dominant Western groups in Canada and Zimbabwe who determine both which acts and which individuals are defined as deviant or criminal. Potential consequences for the aboriginal peoples such as rejection or misunderstanding of the imposed norms and discrimination in the operation of the justice process have been considered. Furthermore, the stigmati-

zation that results from the initial application of the label may set off a chain reaction which, instead of forcing the individual to conform, leads him to act according to the role ascribed to him. "By imposing the majesty of the law to label some few persons as deviant, the Indians are forced to surrender old roles and self-images, and to undergo unique experiences which, paradoxically from the standpoint of the intent of the labeller, may serve to heighten their deviant tendencies. Labelling thus focuses on the secondary deviation which may be brought about by society's reaction to the initial act."[72] Collective stereotyping of the aboriginal peoples in terms of perceived cultural traits may also lead to aboriginal criminality. For example, Lautt[73] points out that, instead of suppressing their Native identity, Indians, especially youthful males, may play one of several roles such as the "noble savage", "the professional" Indian, the aggressive "warrior", the "marginal man" and that several of these roles may justify criminal involvement in different ways.

d. Control Theory

Application of control theory reveals how the social training which an aboriginal individual receives may fail to control against unlawful conduct on his part. According to psychologists, the quality of the training which an individual receives depends on the pattern of rewards and punishments by which he has been conditioned and the models and associates with which he has been reared. If an aboriginal individual has been reared in the traditional environ-

ment he is likely to have received an adequate training in behaviour which is socially acceptable in that environment; but this training will not equip him with the behavioural norms required in the Western environment. Even within the rural aboriginal communities Western influence is causing a rapid breakdown of traditional norms but, at the same time, the continued separation of these communities results in only partial replacement by Western norms. An individual reared in such an environment is likely to be exposed to indefinite and inconsistent norms leaving him with an ineffective behaviour and impulse control system. Urbanization further reduces the holding power of the traditional norms and, at the same time, lack of acceptance on an equal basis in Western society hinders the acquisition of Western norms. "Members of the Indian society who tend to deviate from traditional Indian cultural norms in the direction of the non-Indian cultural standards are deprived of clear-cut models which they may emulate as well as effective communication channels with appropriate non-Indian groups to which their development might gravitate. Accordingly, such persons of necessity become marginal persons who can identify with and internalize neither of the two cultures completely. At best they can integrate their knowledge of and identification with the two cultures only in a limited situational manner. Moreover, the numerous discontinuities of experience in the two cultures frequently leave many situations inadequately defined for the Indian, with resulting confusion and withdrawal."[74] Applying Reckless' containment theory, a

person who has received defective social training and who lacks a sense of identity will not be contained against the allure of crime by either inner or outer containment.

e. Particular Features of Indian Criminality

The statistics reveal two particular features of Indian criminality which merit attention: i. The high proportion of Indian crime which is associated with the use of alcohol; ii. The disproportionately high level of criminality amongst Indian women. The writer has no evidence that either of these features pertains strongly to African criminality and, on the assumption that they do not, some attempt will be made to account for these possible differences between Indian and African criminality.

i. Alcohol

"Of all the literature available on deviant patterns of Indian behaviour, perhaps the most extensive is on the use of alcohol, and alcohol-related offences."[75] In explaining the excessive or illegal use of alcohol, as with other deviant behaviour, it appears that the subcultural, structural, symbolic-interactionist, and control theories are all relevant. Their significance becomes apparent when the circumstances under which Indians have come into contact with alcohol are examined. Alcohol was introduced to the Indians by the fur traders and the problems which ensued as its use rapidly spread have led to numerous attempts to prohibit or control the use of alcohol by Indians through the criminal law. In the historical context, Dailey[76] suggests four reasons why the Indians did drink: the novel physical sensation; as

an excuse for committing acts of violence; the former integrating effects of warfare and other village-wide activities were replaced by the search for and communal use of alcohol; to facilitate the attainment of dreams which was for the Indian his most valued experience. He also identifies a cultural norm which contributed to excessive drinking on the part of Indians: "Consider first their mode of eating, and especially their custom of consuming everything in one sitting. It becomes clear then that it was only the alcohol which was new, not the practice of consuming everything at once. Hence the brandy feasts, as they were called, were on the same pattern as the eat-all feasts...". In a report prepared by the Canadian Corrections Association,[77] the point is made that Indians had no strong controls of a social or psychological kind to structure and contain their drinking behaviour. "Once the belief was established that, somehow, the Indian could not control himself when drinking, it became part of the folk-belief system, and generations of Indians grew up, indeed still grow up, learning that, for some biological reason, they are incapable of drinking in a "normal" manner... Social scientists have shown that, once such beliefs get established about an ethnic group and the people in that group get to accept those beliefs, a kind of self-validating process gets under way in which the people act in the ways expected of them, even though there is no biological basis for their presumed inherited behaviour." In the contemporary context, the survey adds that there still appears to be little social control to inhibit excessive drinking among

Indian people with proportionally less social ostracism from the group as a result of arrest, conviction, and detention for liquor infractions. Nagler[78] comments that, although the Indians' manner of drinking and the social disapproval it provokes are changing gradually, a different attitude towards the use of alcohol persists and many Indians drink to get drunk. He also asserts that, in many instances, Indian drinking is a social pastime which serves as a form of recreation and a response to frustrations and boredom. Brody[79] maintains that the skid row Indian is unlikely to find any real strength in the standard arguments against drinking until his socioeconomic position is radically altered.

It is tentatively submitted that the African people of Zimbabwe have not experienced the same level of problems with alcohol because they already used alcohol before the arrival of the colonists. Social and psychological controls were available to structure and contain their drinking behaviour. Furthermore, although attempts have been made to control their use of alcohol through the criminal law, total prohibition has never been attempted.

ii. Women

Examination of the Canadian criminal statistics reveals, not only that the Native peoples as a whole are over-represented in relation to their total numbers in the population, but also that the over-representation of Indian women compared with non-Indian women is even more marked than the over-representation of Indian men compared with non-Indian men. Furthermore, in their study in Winnipeg, Bienvenue and Latif[80]

found that Indian females account for 25% of all offences attributed to Native peoples, whereas white females account for only 5% of all white offences. "The most interesting hypothesis advanced to explain cultural differences in the sex ratios of criminal activities and changes in these ratios over time is the suggestion that as women become the equals of men in rights and privileges, they become their equals also in crime."[81] In a study of African cultures which drew distinct lines between male and female work and privileges, Houchon[82] found that the crime rates for men exceeded the rates for women by differences ranging from 900:1 to more than 20,000:1. Nettler[83] contrasts these disparities with the figures for North America and western Europe, where women more closely approach equality with men; for example British criminal statistics for 1970 show that the ratio of convictions of males to convictions of females for all indictable offences was 6.1:1. Aboriginal societies drew very distinct lines between male and female roles but, under Western influence, these distinctions are rapidly breaking down. Application of the aforementioned hypothesis would suggest that the crime rates of aboriginal women can be expected to be increasing and approaching the crime rates of aboriginal men. But it does not explain why the sex ratios are already closer in the case of the Indian population than in the case of the non-Indian population; in fact, the reverse would be expected. The writer has been unable to find any studies relating to this enigma and can only offer a tentative hypothesis. This is that the cultural disloc-

ation which Indian women have experienced has been even greater than that of Indian men resulting in a disproportionate increase in their crime rate. For the Indian woman, adaption to Western society, particularly urban society, has entailed not only most of the problems encountered by Indian men, but also a more fundamental change in her social role. Emancipation has meant, not simply increased rights and privileges, but also release from traditional behavioural restraints and loss of traditional support systems.

The writer believes that the important difference in regard to Zimbabwe is that the majority of the African women have not yet been exposed to Western influence to the same degree. A high proportion of them continue to live in the rural Tribal Trust Lands where the traditional lifestyle is maintained to a great extent. Although many of the men work in the urban areas, housing problems and low wages have resulted in many of them leaving their families behind in the rural areas. However, the situation is changing rapidly and increased criminality on the part of African women is to be expected.

Towards a Synthesis

It is clear that no special theory and a fortiori no single factor explains aboriginal criminality. The applicability of the subcultural, structural, symbolic-interactionist, and control theories has been demonstrated. "In attempting to explain the high rates of deviant and criminal behaviour among the Native Peoples, one must take a variety of factors into consideration, including poverty,

boredom, prejudice and discrimination, anomie, and the negative effects of the social welfare system."[84] In view of the extent to which various factors which have been identified as criminogenic appear to pertain to the aboriginal peoples, the disproportions revealed in the Canadian and Zimbabwean criminal statistics are not as surprising as they might seem at first sight; also, it does seem likely that the disproportions reflect some differences in the levels of actual criminal behaviour.

It is submitted that the particular applicability of the general theories of criminogenesis to the aboriginal peoples of Canada and Zimbabwe can be related to a single feature: the impact of the imposition of Western norms on the aboriginal peoples. This has had the effect of destroying a culture; that is not to say that no aspects of aboriginal cultures have been preserved, but that the imposition of a Western type normative order precluded the continuance of the aboriginal cultures intact; at the same time the way in which Western norms have been imposed in both countries has prevented either the assimilation of the aboriginal peoples into Western culture or the emergence of a new integrated culture. "A culture includes the training that controls crime...Culture limits crime, and channels crime where it calls for it. The circumstances that destroy a culture are, therefore, the circumstances that induce crime."[85]

The situation can be viewed in terms of the framework outlined earlier in this Chapter.[86] The set of norms which an individual acquires depends on his neurophysio-

logical constitution, the quality of the training he receives, and the content of the lessons he is taught. Although amenability to learning differs from one individual to another, there is no evidence that there are any inherent differences between racial groups. However, the quality of the training an individual receives and the content of the lessons he is taught depend on the norms of the groups with whom he is reared and with whom he associates. An aboriginal individual who has been reared in the traditional environment is likely to have internalized a consistent set of norms, but many of these norms will conflict with the norms of the dominant Western society (external conflict); particularly if he migrates to the urban areas, his traditional norms will be inadequate and he will be exposed to new norms (normlessness and internal conflict). Due to the anomic condition of contemporary aboriginal society, an individual reared in such an environment is likely to internalize inconsistent and/or inadequate norms in the first place (internal conflict and normlessness), and some of his norms are likely to conflict with the norms of the dominant Western society (external conflict). It is submitted that the existence of such normative conflicts is at the root of all types of explanation of aboriginal criminality. Not only does the persistence of traditional norms produce direct conflicts with the Western criminal law, but it is considered that this factor, combined with racial discrimination, has been instrumental in producing the low socioeconomic status of the aboriginal peoples. Furthermore,

it is submitted that it is failure to have internalized consistent and adequate norms which causes or permits an individual to resort to deviant behaviour in response to frustration. It is the dominant Western groups in Canada and Zimbabwe who determine both which acts and which individuals are defined as deviant or criminal, and the stigmatization which results from the initial application of the label may result in secondary deviance or further crime.

Footnotes (Chapter III)

1. Nettler p. 1.

2. Nettler p. 97.

3. Nettler pp. 137-139.

4. Nettler p. 141.

5. The assumed existence of a conforming culture within the society at large is open to challenge, particularly in the Zimbabwean context, but it is submitted that common cultural prescriptions can be discerned within the dominant segment of any society.

6. See, for example, Silverman and Teevan pp. 153-156; and Wright p. 31.

7. See Sellin (i). (See also summaries in Nettler p. 142; and Silverman and Teevan pp. 151-152).

8. Sellin (ii) p. 17.

9. Nettler p. 127.

10. See, for example, Ribordy.

11. See, for example, Williamson.

12. See Miller.

13. Wright p. 24.

14. See, for contrasting views, Miller; and Wald.

15. See Durkheim. (See also summaries in Nettler pp. 155-157; and Wright pp. 25-26).

16. See Merton. (See also summaries in Nettler p. 157; Silverman and Teevan pp. 152-153; and Wright pp. 26-27).

17. Cohen, A.K. Delinquent Boys: The Culture of the Gang. Glencoe, Ill.: The Free Press, 1955. (See summaries in Nettler p. 170; Silverman and Teevan pp. 153-154; and Wright p. 31).

18. Cloward, R.A. and Ohlin, L.E. Delinquency and Opportunity: A Theory of Delinquent Gangs. New York: The Free Press, 1960. (See summaries in Nettler pp. 157-159; Silverman and Teevan pp. 154-158; and Wright p. 31).

19. Nettler p. 190.

20. See Sutherland. (See also summaries in Nettler pp. 194-196; Silverman and Teevan pp. 150-151; and Wright pp. 29-30).

21. Nettler p. 202.

22. Schur (ii) p. 246.

23. See Becker (ii).

24. See Tannenbaum.

25. Reckless, W.C. The Crime Problem. 4th ed. New York: Appleton-Century-Crofts, 1967. (See summary in Nettler pp. 218-221).

26. See Jaffe.

27. Silverman and Teevan p. 147.

28. In particular the proponents of the "multiple factor" approach such as Burt; also (although without any denial of the importance of a theoretical approach) Nettler.

29. See Quinney (ii).

30. Nettler p. 251.

31. Lautt p. 114.

32. See supra pp. 24-28.

33. Discrimination may also have an indirect impact on the statistics, in that it is likely to lead to alienation from the system resulting in an increase in actual criminal behaviour. But the immediate concern is with the extent to which differences in perceived criminality can be attributed directly to discrimination.

34. "Studies in Canada which focus on social class clearly demonstrate that people of Indian ancestry are predominantly of lower socioeconomic status." (Bienvenue and Latif p. 355). Although the writer is not aware of any specific studies of this nature in Zimbabwe, it is generally accepted that the African people constitute a relatively underprivileged majority and this is borne out by the available data relating to such matters as income, education, and occupation.

35. See supra p. 16 and p. 19.

36. Jefferson p. 68.

37. Nettler 2nd ed. p. 64.

38. For summaries of, and references to, the principal American studies, some of which will be referred to below, see Hagan; and Nettler 2nd ed. pp. 64-70.

39. Nettler 2nd ed. p. 65.

40. Nettler 2nd ed. p. 70.

41. Hagan p. 50. (Quotation from Indians and the Law. Ottawa: Queen's Printer, 1967).

42. The suggestion that the exercise of police discretion at the surveillance/detection level may be "discriminatory" should not be taken as an allegation of deliberate racial or class bias on the part of the police. With regard to the vehicle-check activities, for example, it was apparent that some sort of selectivity was necessary if the flow of traffic was to be maintained, and discussions with the police indicated that the "discrimination" was based on the perceived likelihood of commission of the offences which the police were attempting to detect. Thus examples of justifications given were that Africans were more likely to be operating "pirate-taxis", juveniles were more likely to be driving without drivers' licenses, and old vehicles were more likely to be unroadworthy. Although the "discriminatory" exercise of discretion may therefor be perfectly "legitimate" from the police perspective, the danger that such practices may have self-fulfilling and self-perpetuating consequences and the potential effects of such practices on statistics for certain types of crime cannot be ignored.

43. The writer has been on police-car patrols with the E.C.P. and the B.S.A.P. as an observer, and has had a number of opportunities for unofficial observation of police activities.

44. Hogarth, J. Sentencing as a Human Process. Toronto: University of Toronto Press, 1971. (See Jefferson p. 70).

45. See Bienvenue and Latif p. 355.

46. See Lautt p. 84. For a brief report of the Conference see Ministry of the Solicitor General (Canada) publication.

47. Hagan, J. Extra-Legal Attributes and Criminal Sentencing. Law and Society Review. 1974 Vol. 8 pp. 357-383. (See Lautt p. 87).

48. Wynne, D.F. and Hartnagel, T.F. Race and Plea Negot-

iation: An Analysis of Some Canadian Data. Canadian Journal of Sociology. 1975 Vol. 1 No. 2 pp. 147-155 (See Lautt p. 87).

49. See supra pp. 27-28.

50. See Nagler (i) pp. xv-xvi, 1-2, and 18.

51. See supra pp. 9-13.

52. See Zentner.

53. Cressey, D.R. quoted in Nagler (ii) p. 66.

54. See supra pp. 13-19.

55. Nagler (i) p. 11.

56. See Vogt.

57. Nagler (i) pp. 66-67.

58. See, for examples, Balikci; Honigman, J.J. Social Disintegration in Five Northern Canadian Communities. Canadian Review of Sociology and Anthropology. 1965 Vol. 2:4 pp. 199-214 (See Lautt pp. 92-93); and Zentner. Although there is probably some degree of social disintegration in the Tribal Trust Lands of Zimbabwe, the writer considers that a much more significant factor in the Zimbabwean context is the high degree of anomie which probably exists in the peri-urban African townships. Many of the residents are migrant labourers who have had to leave their families behind in the Tribal Trust Lands.

59. Bynum, J. quoted in Nagler (i) p. 72.

60. Nagler (ii) pp. 280-288.

61. Lautt p. 94.

62. Nagler (ii) p. 280.

63. Dinitz, Dynes, and Clarke p. 12.

64. See supra p. 28.

65. See supra p. 51.

66. Nagler (ii) p. 134.

67. Nagler (i) p. 7.

68. See, for examples, Deloria, V. Beware of Anthropologists. In: Bowles, Hanley, Hodgins, and Rawlyk pp. 42-44; and James.

69. Nagler (i) pp. 65-66.

70. Reasons, C. Crime of the American Indian. In: Bahr, H., Chadwick, B., and Day, R. (Eds.) Native Americans Today: Sociological Perspectives. New York: Harper and Row, 1972. (See Nagler (i) p. 65).

71. Canadian Corrections Association. Treaties Bear Upon All Issues (Extract from Indians and the Law). In: Bowles, Hanley, Hodgins, and Rawlyk p. 66.

72. Henshel, R.L. and Henshel, A.M. quoted in Nagler (i) pp. 73-74.

73. Lautt p. 96.

74. Zentner p. 224.

75. Nagler (i) p. 67.

76. See Dailey.

77. Canadian Corrections Association. Indians and Alcohol (Extract from Indians and the Law). In: Bowles, Hanley, Hodgins, and Rawlyk pp. 62-63.

78. Nagler (i) pp. 69-71.

79. See Brody, H. Indians on Skid Row. In: Bowles, Hanley, Hodgins, and Rawlyk pp. 64-65.

80. Bienvenue and Latif p. 356.

81. Nettler p. 102.

82. Houchon, G. Les Mecanismes Criminogenes dans une Societe Urbaine Africaine: Revue Internationale Criminologie et de Police Technique. 1967 Vol. 21 pp. 271-292. (See Nettler p. 102).

83. Nettler p. 103.

84. Nagler (i) p. 65.

85. Nettler p. 252.

86. See supra pp. 47-49.

IV. ACTION

Action as an Explanation

It should already be apparent that, in a heterogeneous society, the action taken with regard to crime may in itself be an explanation for criminality. Labelling theory suggests that defining particular behaviour as deviant or criminal is the first stage in a process which ultimately may be counter-productive. Where legal norms are imposed on people who do not share those norms, deliquency may be the result of rejection of, or failure to understand, particular imposed norms; re-definition of the person as deliquent may force him further out of the prevailing social structure and cause him to re-define his self-concept, leading to continued deliquency and the formation of delinquent subcultures.

Inaction and differential action would also appear to be explanations for criminality in a heterogeneous society. When there is a lack of agreement on the norms embodied in the criminal law, enforcement becomes a problem. Behaviour which is contrary to the prevailing legal norms may be ignored or even encouraged amongst certain groups; when no social sanction is applied, the laws depend for their effectiveness solely on legal sanctions, the imposition of which is both uncertain and delayed. "When mores are adequate, laws are unnecessary;

when the mores are inadequate, the laws are ineffective."[1] It has already been noted that a high proportion of crime which is committed is not detected or not reported[2] and it is clear that, even when the crime is known, the offender is often not apprehended, not prosecuted, or not convicted. In the absence of any sort of sanction against illegal behaviour, there is nothing to discourage that behaviour, and the offender and others who are aware of the situation may well conclude that "crime does pay". Differential enforcement is likely to affect the criminal statistics both directly and indirectly; discrimination against particular groups will directly inflate their perceived criminality and is also likely to result in alienation thereby increasing the actual criminality of such groups. It is clear then that the action which a society takes against deviant or criminal behaviour must be taken into account in attempting to explain that behaviour.

Action in Canada and Zimbabwe

What is the societal response to deviance and crime in Canada and Zimbabwe and what particular problems are presented with regard to the aboriginal peoples? It has already been established that, in both countries, the traditional systems of social control have been generally superseded by Western type systems; a unified Western style legal system administered mainly by non-aboriginals and a uniform criminal law based on Western norms have

been established in each country. [The only exception is that in Zimbabwe certain civil cases may be decided in accordance with customary law and tribal courts may exercise limited civil and criminal jurisdiction.][3] Within the aboriginal communities, deviance from imposed legal norms which do not accord with the norms of the community is unlikly to lead to any social sanctions against the offender, with the result that these legal norms depend for their effectiveness solely on the application of structured legal sanctions. Whereas social controls may prevent deviance from occurring, legal sanctions, if imposed at all, are inevitably imposed after the event and usually after some considerable time has elapsed.

The Western criminal justice system which "grinds" into action once an individual is alleged to have committed an offence is very different from the traditional justice systems of the aboriginal peoples.[4] Although traditional legal practices varied from tribe to tribe, tribal justice systems appear to have shared certain fundamental characteristics related to the communal orientation of tribal societies and which contrast with the essential characteristics of Western justice systems. Under the traditional systems, justice was administered by tribal chiefs, elders, or councils within the community rather than by detached representatives of the state. The main aim of legal proceedings was to restore the social

balance and reconcile the parties in order to prevent the break-up of the community. The function of the court was to ascertain and remove the root-cause of the conflict rather than to determine specific issues through the impartial application of abstract rules of law. To this end, the whole social setting and the relationship of the parties and their positions in the community were taken into consideration. Applying Western terminology, the approach was inquisitorial rather than accusatorial and more akin to arbitration than litigation. The proceedings were not trammeled by forms of pleading or rigid rules of procedure and evidence; public participation appears to have been encouraged, and no professional legal representatives were involved. The relatively clear distinction between civil and criminal law to the Western mind is difficult to apply to tribal customary law where "crimes" were often settled by payment or compensation of some sort rather than punished by a penalty. Although in some cases a penalty was imposed, the emphasis in most cases appears to have been on restitution and compensation of the aggrieved party. Forcible execution of judgements was generally unnecessary since the individual's dependence on the community meant that ostracism was a very effective alternative sanction. By contrast, in Western legal systems there is a much greater emphasis, and dependence, on punishment. A wide range of wrongs are classified as

crimes and penalties are imposed on the offender by the state; the aggrieved party often has to institute separate civil proceedings to obtain compensation, and civil judgements often have to be enforced through the imposition of penalties. Incarceration is a widely used sanction and, although there is an increasing emphasis on reformation of the criminal offender, treatment is often attempted in an institutional environment removed from the community.

Stating these contrasts is enough to reveal some of the problems which are likely to occur when individuals from the traditional background come into contact with the Western criminal justice system. It is probable that the parties involved will not understand the proceedings and will not feel that justice has been done; they will not be permitted to raise all the matters they consider relevant and they will not be familiar with Western legal concepts. "The native concept of guilt and innocence is different from ours; it is more absolute; they can't understand our technicalities."[5] An aggrieved party will expect to receive compensation and will often be unaware of, or lack access to, civil remedies with the result that he may be dissatisifed with the outcome of the proceedings. The offender is even more likely to be dissatisfied. He may not consider that what he did was wrong or that he has received a fair trial; even if he admits the offence, he may not understand why a penalty should be

imposed when he is prepared to make restitution. Incarceration is likely to result in further alienation from the system; the offender is removed from his own community and exposed to other offenders in the context of a penal system which is foreign to him and which he may come to regard as oppressive. "Criminal Justice is another Turkey with all the trimmings. Criminal Justice is Mandatory Parole, which means parole after you have finished your sentence. Criminal Justice is Temporary Leave of Absence after over three-quarters of your sentence if you have lost all your pride and crumbed enough. Criminal Justice is not leniency nor any real concern for the man's future. Criminal Justice is to see how far you can crawl." (Native Brotherhood, Saskatchewan Penitentiary).[6]

The Courts also experience unusual problems in criminal trials involving aboriginal individuals who have a traditional background. Western law must be applied and customary law cannot be taken into account. In the result, although an accused may have contravened his customary law, he cannot be convicted of any offence unless his behaviour also amounts to a contravention of Western law; and, conversely, if an accused has clearly contravened Western law, the fact that he acted in a way allowed or even enjoined by his customary law cannot be allowed as a defence. However, Western courts do take an accused's

background into consideration in examining his intention and in ascertaining his moral guilt, so there is some scope for traditional customs to be taken into account both in reaching a finding and, especially, in mitigation of punishment. This entails the problems of ascertaining and understanding the relevant customs and of relating them to Western concepts. A good illustration of the sort of difficulties which can arise is provided by the Rhodesian case of R. v. Chigango and Others, 1923 H.C. (unreported).[7] The accused were charged with murder and the "relevant" facts were that Chigango, a chief, had instructed Chiriseri to kill Chigango's son and that Chiriseri and a number of others had performed the deed. But the background to the matter, which the defence failed to adequately bring out in evidence, was considerably more complex. Under the customs of the tribe, if the rains were late, the rain god had to be appeased through offerings of cloth and beer; if this failed, it was believed that the only explanation for the continued wrath of the rain god was that his wife (who was believed to be on earth) had been violated and that the violator had to be sacrificed. There was a drought in the area in 1922 and the "witchdoctors" (diviners) identified Chigango's son as the violator; it then became incumbent upon Chigango, as chief, to arrange the sacrifice and upon the others to carry out his instructions. (Incidentally, rain fell

within forty-eight hours of the sacrifice). The inability of European counsel acting for the other accused to understand these customs or to relate them to Western concepts is revealed by the fact that they actually raised the plea of insanity. The jury found all the accused guilty of murder and sentenced them to death but recommended mercy. In his opinion on the case, Tredgold J. criticized the conduct of the defence and stated: "I am convinced that all the accused were acting under the strong belief that they were performing a necessary religious ceremony, though they knew they were doing wrong according to our ideas; and chose to take the risk of discovery rather than forego the measures necessary to obtain relief from the drought." His recommendation that the sentences be commuted was followed.

Action to Reduce Aboriginal Criminality

What can be done to reduce aboriginal criminality and the problems associated with it? A variety of factors which appear to contribute to aboriginal criminality have been identified and, if the crime problem is viewed in isolation, the obvious answer to this question is that positive action should be taken to remove, or minimize the influence of, such factors. However, it is clear that the crime problem cannot be divorced from the social context in which it occurs and that the wider implications of any proposed reform must be considered. "One cannot change a

law, enforce it, ignore it, or enact any reform of our collective enterprise without starting a chain of effects, many of which are bound to be unforeseen and some of which are bound to be undesirable...Values have prices. The social arrangements we prefer carry a cost. Crime may be one such cost. It is its own pain. It may be a consequence, nonetheless, of some of the circumstances, and some of the movements, that are otherwise preferred."[8]

1. Research

A prerequisite to rational reform is research, not only to identify with greater certainty the problems in the existing social structure, but also to identify alternative options and to clarify their implications. Lautt[9] points out some of the difficulties presented by cross-cultural research and suggests that, in studying Natives and justice, as much time should be set aside to systematically assess the research process itself, as is set aside to study the actual topic. She also comments that researchers on the topic should not be embarrassed to admit that their research is political, and refers to the difficulty of obtaining support for research on deviance.

2. The Options

a. Cultural

In the light of limited existing knowledge, what appear to be the options as regards action to reduce

aboriginal criminality? It has already been submitted that the key to aboriginal criminality in Canada and Zimbabwe lies in the impact of the imposition of Western norms on the aboriginal peoples: to date no stable accommodation between Western culture and aboriginal subculture has been achieved in either country.[10] In general terms, there appear to be three possible options regarding the relationship of a subculture with a dominant culture: assimilation into the dominant culture, integration with it, or separation from it. Historically, the relationship of the aboriginal subcultures with the dominant Western cultures in Canada and Zimbabwe has been characterized by an unstable combination of enforced separation and assimilation; the aboriginal peoples have been segregated from Western society but controlled by it and increasingly subjected to Western influence. The result has been varying degrees of destruction of the traditional cultures with forced assimilation on Western terms.

Determination of the future relationship is essentially a political matter, and opinion is varied amongst both aboriginal and non-aboriginal peoples as to the best course of action.[11] If the crime problem is viewed in isolation, separation appears to offer a solution. "States that attempt to make one nation out of many will have higher crime rates than states of similar development that allow voluntary separation."[12] But if national

unity is desired, separation is obviously contrary to this objective. There is also the danger that separation, particularly enforced segregation , may involve inequality and discrimination. A further reason which is advanced for separation is that it is the only way in which different cultures can preserve their separate identities. But, with regard to the aboriginal peoples, it is arguable that rehabilitation of their traditional cultures is no longer a realistic or desirable objective. Exposure to Western influence means that a total reversion to the tribal lifestyle is unlikely, and, at the same time, preservation of fundamental cultural traits derived from that lifestyle hinders economic advancement in modern conditions. "If reservation personality is to move towards a healthier state, more suitable to survival in the modern world, it must do so within the constraints imposed by that world. Its hope lies in the future, not the past."[13] Assimilation into Western culture is the opposite extreme and again appears to offer an ultimate solution to the problem of aboriginal criminality. However, assimilation on Western terms is opposed by many of the aboriginal peoples and forced assimilation, in particular, is likely to create rather than resolve social tensions.

The remaining option is the establishment of some sort of integrated culture. "To some, E pluribus unum

means that a new unity will be woven out of the diverse strands of our society, each group perhaps contributing to the total social and cultural life, but losing its separate identity. This we shall call assimilation. To others, E pluribus unum means a more complicated kind of unity, one that permits differences and even welcomes them as contributions to the richness of society. Only those differences that lead to disruptive conflicts are opposed. This interpretation implies, moreover, full equality in health services, in educational, political, and economic opportunity among all groups. This we shall call integration."[14] Voluntary assimilation of all the groups in a society into a new unified culture is probably the ideal if resolution of social tensions is the main objective; furthermore, with specific reference to Indian and Western cultures, a number of writers have pointed out that each culture has much to gain from an infusion of some of the elements of the other culture.[15] But it may be argued that there is little prospect of the dominant cultural group striving for a genuine cultural synthesis[16] or that such a synthesis is impossible to achieve; in any event many members of each cultural group are opposed to the loss of their separate identity. Integration, as defined above, appears to be the option which would be mostly widely acceptable. It would permit different cultural groups to retain their separate identi-

ties within a unified system. However, the problems in attaining such an ideal are readily apparent. "It is not at all sure that engineered integration will work. If its object is that of perceiving, honoring and preserving the real, life values in any and every culture, its efforts will probably meet with cooperation and goodwill. The result will unquestionably be that of enriching and enhancing the entire human heritage, but if its object is that of coercing or enticing the members of a less dominant culture to desert their own good, humane (but differing) customs to become the expedient converts of a more dominant culture, it is likely that it will fail in all but the creation of further ill-will and misunderstanding."[17] Again, it is arguable that there is little likelihood of the dominant cultural group striving for the former objective[18] or that such an objective is impracticable. A particular obstacle to cultural integration in Canada and Zimbabwe appears to be the fact that the aboriginal peoples of each country do not share a strong, common culture adapted to modern conditions. Their traditional customs are diverse and relate to a tribal lifestyle, with the result that these customs are largely incongruous in contemporary conditions and have already undergone a degree of destruction. Perservation of these customs may well be incompatible with the objective of equal opportunity, and, even if only those

differences that lead to disruptive conflicts are opposed, this may entail destruction of all but the more superficial customs. For these and other reasons, many commentators on the Indian situation have stressed the necessity for an interim stage of separate development on the way to integration, to enable the Indian people to unite in order to assert their rights and revitalize their cultures.[19] The danger that engineered integration might amount to forced assimilation into Western culture led to a great deal of criticism, and ultimate abandonment, of the Canadian Government's 1969 proposals to terminate the separate constitutional and legislative status of the Indian peoples.[20]

b. Legal

Examination of proposals and programmes for reform of the legal system reveals that the same sort of options and problems are involved.

i. Separation

Total separation would involve separate laws as well as separate justice systems. But it is submitted that completely separate legal systems within a single state are impracticable. Some common denominator for conduct is needed and certain standards of behaviour will inevitably be required of all members of a society. However, apart from a framework of basic rules which govern the society as a whole and on which it is structured, separate laws

and/or justice systems are a possibility. For example, in the United States, Indian tribal courts have jurisdiction over all civil matters and all criminal offences (except thirteen Federal offences) involving members of the tribe and aliens on its territory. Many tribes have enacted their own criminal codes and many have their own police forces, probation and parole officers, juvenile workers, lawyers, lay advocates, Bar associations, and jails. Statistical data indicates that the Indian crime rate on the Reservations is decreasing, particularly for violent offences.[21] Jefferson[22] points out that a duplicate of the U.S. system would be difficult to implement in Canada due to the lack of recognition of tribal sovereignty and the diversity in status, land ownership, and geography amongst the Native peoples. At the National Conference on Native peoples and the Criminal Justice System held in Edmonton in 1975, Ontario Indians and Metis proposed a concept of Peacemaker Courts, which would establish separate administration of justice but not separate laws.[23] These courts would have the same jurisdiction as the Provincial Courts and an Indian alleged to have committed an offence on a Reserve would have the choice as to which Court he would appear before; the Peacemaker Courts would also be able, on an informal basis, to settle matters of a civil nature between band members where both parties submit to the court's jurisdic-

tion. A number of other proposals made at the Conference involved the development of separate structures and programmes by and for the Native peoples. In Zimbabwe African tribal courts already have limited civil and criminal jurisdiction, and African customary law can be applied by any court in determining certain civil matters although not in criminal matters.[24]

It is submitted that the wider political and social implications of having separate laws and/or justice systems must be kept in mind. Unles it is regarded as only a necessary interim stage, separation in the legal sphere is essentially inconsistent with a general policy of assimilation or of integration. In this regard, it is interesting to note that criminal jurisdiction was first conferred on the tribal courts of Zimbabwe in 1969 at a time when the trend in Government policy in general appears to have been towards separate development.

ii. Assimilation

Forced assimilation of the aboriginal peoples into the Western legal system appears to have been the basic policy in Canada and, to a lesser extent, in Zimbabwe. Although it is considered that this policy has produced many of the problems which the aboriginal peoples have experienced with the law, this does not necessarily mean that the objective of assimiliation in the legal sphere must be rejected. The problems may lie in the way in which the

policy has been implemented rather than in the objective itself. In this regard, Mittlebeeler[25] asserts that the decision to establish a single criminal law in Zimbabwe was correct, pointing out that a uniform criminal law is a unifying influence which can override tribal and geographical barriers and help to hold together an otherwise centrifugal society. He also raises the view that, in the criminal sphere, African customary law was out of place in a country that was rapidly adapting to the modern world. Various measures appear to be available which would reduce the problems with the existing system in each country without changing the systems themselves. "(The) basic conflict between the Euro-Canadian legal system with (sic) traditional aboriginal peacekeeping is accentuated by the lack of involvement of Native people in the formulation of contemporary law, and administration of justice. The personnel in criminal justice...are on the whole non-Native. This fact is not only alienating to the vast numbers of Natives processed through the system but increases the possibility of misunderstanding and discrimination."[26] The need for increased involvement of the Native peoples in all aspects of the criminal justice system was stressed throughout the National Conference.[27] Another problem which has been identified in both Canada and Zimbabwe is the lack of knowledge and understanding on the part of many of the aboriginal

peoples of the Western laws, procedures, and justice facilities. This problem could be countered by extensive educational campaigns involving the aboriginal peoples in general and not merely those who have already committed an offence. Other proposals to improve the existing situation include decentralization of justice services, and the development of counselling services for the aboriginal peoples (preferably operated and staffed by aboriginal peoples). The Native Courtworkers programme, which started in Edmonton in 1964 and has rapdily expanded, is an example of successful implementation of the latter proposal.[28]

iii. Integration

"Clearly, the native workers in any 'justice' program can play the role of a 'pawn' - to translate words, not ideas and perspectives, to increase the trust of other natives in the white service structure, and to insure that natives utilize services provided by the white bureaucracy. Or the native worker could play the role of interpreter as change agent - to, over time, modify white structures and programs to suit the needs of any particular native community or client group; to encourage the phasing out of the white service and its replacement by a program which has developed from the client group itself (not from a political representative of the client group), and to interpret, to the white world, the general meaning systems

of the native community, if they are different."[29] The most promising option, if practicable, would appear to be the development of a truly integrated legal system. This may well entail an element of separation at least in the transitory stage, but the ultimate objective would be a uniform set of laws and justice system synthesized out of the best elements of the Western, and the traditional, legal systems. Although revision of the laws themselves to incorporate or allow for traditional values may be a remote prospect in Canada, recent political developments in Zimbabwe make this a less remote prospect in that country. "This is a time of opportunity for the lawyers of Africa. They have the great task of writing down the customary laws of the people and of moulding them into the general law."[30] Even without changes in the laws, it may be possible to adapt the justice system so as to achieve a greater degree of harmony with the values of the aboriginal peoples. "The territorial court made some discoveries about the principle of bringing justice to every man's door. It is not entirely a matter of geographical accommodation. When you reach the man's door you must conduct the court to encompass his concepts of justice."[31] Having a uniform set of laws and justice system does not preclude different concepts being applied, and different services offered, to different peoples within that system. In keeping with this notion are re-

commendations made at the National Conference that all non-Native staff in the criminal justice system engaged in providing services to Native peoples should be required to participate in some form of orientation training designed to familiarize themselves with the special needs and aspirations of Native persons, and that Native communities should be given the resources to develop special services and programmes for Native offenders.

"In policy planning and program development, emphasis should be placed upon prevention, diversion from the criminal justice system to commmunity resources, the search for further alternatives to imprisonment and the protection of young persons."[32] This is one of the guidelines for action in regard to the problems of Natives within the Canadian criminal justice system which was adopted by the Ministers at the Federal-Provincial Conference which followed the National Conference. Similar recommendations are contained in the report of the survey carried out by the Rhodesia Prisoners' Aid Society.[33] An increased emphasis on administration of justice within the community and a reduced emphasis on punishment, particularly imprisonment, would certainly bring the criminal justice system more into harmony with traditional peacekeeping; and it is submitted that such developments would not only be valuable in relation to the aboriginal peoples, but would improve the Western justice

system as a whole. In the light of current criminological knowledge, there can be little doubt that "prevention is better than the cure"; that where possible offenders, particularly juveniles, first offenders, and petty offenders, should not be subjected to the criminal justice system; that where possible imprisonment should be avoided and non-custodial measures sought; and that rehabilitation of the offender is most likely to be achieved within the community. Both the report of the Conferences held in Edmonton and the report of the survey carried out by the Rhodesia Prisoners' Aid Society contain numerous specific suggestions related to these general objectives. These include:-

A) Establishment of community-based legal education programmes and counselling services.

B) Careful scrutiny of statutory and regulatory offences with a view to decriminalization and utilization of alternatives to the criminal sanction. An example is Manitoba's Intoxicated Persons Detention Act, 1970 which decriminalizes public drunkeness.[34]

C) More careful classification of petty offenders with a view to keeping"non-criminals" out of the criminal courts and instead channelling them into community-based counselling services or special tribunals. A scheme which combines the ideas of legal education and diversion from the criminal justice system was introduced in South Africa

in 1972. Aid Centres have been set up in many of the peri-urban African townships to assist township residents who have contravened minor statutory provisions and explain to them how the law works and how they should comply with it. Statistics for the first few months in which the scheme was in operation reveal a significant reduction in the number of people appearing before the courts on petty charges.[35]

D) Decentralization of justice services and increased community participation. One such programme is operating successfully in the Roseau River Reserve in Manitoba. Although criminal justice is administered by the normal agencies of the Western justice system, the community council is involved at all stages. It makes recommendations on questions of charge; on who will appear in court; on sentencing; and, if appropriate, on how the sentence can be supervised. Often, a sentence will demand only restitution, or "volunteer" work in the community or for the victim, and, in such instances, the council is responsible for ensuring that the offender complies with the sentence.[36]

E) Avoidance of imprisonment in lieu of payment of fines through greater efforts to ensure that fines are only used when meaningful, are related to the financial circumstances of the offender, and are paid. This would entail devising ways of placing fuller information concerning an

accused's background and means before the court, and alternative ways of ensuring payment such as attachment of property.

F) Development of, and increased use of, alternatives to imprisonment, especially community-based alternatives. One alternative which merits particular consideration is the idea of extra-mural labour for first and minor offenders. This form of punishment is already employed in some East African countries and in Botswana, Lesotho, and Swaziland and, in general, the idea appears to operate successfully. A similar scheme in the form of community service for certain classes of offenders is in operation in Britain.[37] In regard to this alternative, it is interesting to note that the form of punishment imposed by tribal courts in the United States is typically forced labour for the benefit of the tribe or the victim rather than imprisonment.[38] Another possibility, suggested at the National Conference in Emonton, is the establishment of community-based treatment and residential centres as alternatives to prison in the first instance and for use by persons on parole or temporary absence.

G) Development of special programmes and self-help groups for and by aboriginal prison inmates.

H) Provision of probation, parole, and aftercare supervision and assistance within the community to re-orient an offender to the community of his choice.

Although implementation of any of these suggestions is likely to improve the existing situation, it is submitted that substantial improvement will only be achieved if they are implemented as part of a coherent programme for reform of the legal system as a whole. Even then, it seems clear that the legal system is not the whole, or even the main, problem. Wider political and social changes would be required in order to get to the root of aboriginal criminality.

Footnotes (Chapter IV)

1. Sutherland, E.H. and Cressey, D.R., quoted in Quinney (ii) p. 27.

2. See supra p. 23.

3. See supra pp. 8-19.

4. In researching this particular topic, the writer consulted various sources which are listed in the Bibliography and, in addition, personal summaries of three articles: Gluckman. The Ideas in Barotse Jurisprudence; Holleman. Hera Court Procedure. Native Affairs Department Annual. 1952; and Holleman. Indigenous Administration of Justice. Native Affairs Department Annual. 1955. Unfortunately, the writer does not presently have access to the original sources containing these articles and is unable to furnish more detailed references.

5. Manitoba Chief Judge Gyles, H. quoted in Krotz p. 30.

6. Quoted in Jefferson p. 68.

7. See Mittlebeeler pp. 167-169.

8. Nettler pp. 250-251.

9. See Lautt pp. 105-110 and pp. 113-114.

10. See supra p. 80.

11. For a collage of differing opinions about the situation of the Indian in Canada see Bowles, Hanley, Hodgins, and Rawlyk.

12. Nettler, p. 254.

13. James, p. 239.

14. Dozier, Simpson, and Yinger p. 250.

15. See, for example, Newell, W.B. Some Aspects of the Indian Culture; Poole, D.G. The Two-Way Street; and Wuttunee, W.I.C. Side By Side With the White Man. In: Bowles, Hanley, Hodgins, and Rawlyk pp. 173-179; pp. 184-188; and pp. 195-197.

16. In view of the fact that the aboriginal peoples are now politically dominant in Zimbabwe, there appears to be a better prospect of this being attempted in that country than in Canada.

17. Poole, D.G. in Bowles, Hanley, Hodgins, and Rawlyk p. 193.

18. See footnote 16 supra.

19. See, for example, Adams, H. Racial Integration: A Remote Possibility; Kelly, F. The Fresh Assertiveness: Red Power; and Poole, D.G. A Reaction to the Official View. In: Bowles, Hanley, Hodgins, and Rawlyk p. 198; pp. 24-26; and pp. 193-195.

20. See "The White Paper and Responses" in Bowles, Hanley, Hodgins, and Rawlyk pp. 201-224.

21. See Jefferson p. 72.

22. Jefferson p. 72.

23. See Jefferson pp. 72-73. For a brief report of the Conference see Ministry of the Solicitor General (Canada) publication.

24. See supra pp. 17-19.

25. Mittlebeeler pp. 208-209.

26. Jefferson p. 70.

27. See Ministry of the Solicitor General (Canada) publication.

28. For a summary of the work done by Native Counselling Services of Alberta see Cunningham.

29. Lautt p. 92.

30. Lord Denning M.R. in Preface to Journal of the Denning Law Society. (University College of Dar-Es-Salaam and University of East Africa Tanzania). 1966 Vol. 1 Nos. 1-4.

31. Sissons, J. p. 123.

32. Ministry of the Solicitor General (Canada) publication p. 38.

33. See Nairn pp. 13-23.

34. See Krotz p. 30.

35. See Nairn pp. 21-22.

36. See Krotz p. 30.

37. See Nairn p. 20 and pp. 30-36.

38. See Jefferson p. 71.

V. CONCLUSION

In attempting to understand deviance in any society, it is necessary to examine how that society defines, explains, and acts with regard to deviance. Crime should not be regarded as a special category of behaviour but as a particular type of deviance, the explanation of which must take into account the same dynamic processes which produce any other type of deviant behaviour. The diversity of norms in a heterogeneous society presents problems with respect to defining behaviours that are to be labelled as crimes and taking action against such behaviours. The diversity of norms and the problems of definition and action with regard to crime are all relevant in explaining the existence and persistence of criminal behaviour in such a society.

Behaviour is evaluated by the dominant groups in a society in terms of their norms and it is their norms which are incorporated in the law. As a result of cultural differences and social stratification, there are groups of people in a complex society who do not share the norms of the dominant groups. It appears that individual criminality and differences between the crime rates of different groups within such a society are largely attributable to this state of affairs. The co-existence of groups with different norms means that an individual will not necessarily internalize the dominant social norms.

Since learning occurs through interactional processes, the set of norms which an individual acquires depends mainly on the norms of the groups with whom he is reared and with whom he associates. Definition of an individual as criminal may result from his behaving in accordance with group norms which conflict with the dominant norms or from the inadequacy of his norms to elicit a socially acceptable response in a given situation. Labelling processes may lead to secondary deviance and further crime. Inaction and differential action with regard to crime would also appear to be explanations for criminality in a heterogeneous society.

Both Canada and Zimbabwe are countries with heterogeneous societies. A particular feature, common to both countries, is that they were colonized by peoples of European descent who became the dominant groups and imposed their values on the aboriginal peoples living in those lands. In each country, the traditional normative order and legal system were replaced by a Western type normative order and legal system. Laws based on Westen norms were imposed and decisions had to be made concerning the extent to which traditional systems of social control would be preserved and traditional customs recognized. "Abstract justice as it affected the indigenous inhabitants was not a primary concern for the settlers [in Rhodesia (Zimbabwe)], any more than it was for settlers in the American West, who were scarcely well versed in the

customs of the Sioux and Cheyenne. (It is arguable that the Rhodesian record in this respect was better than the American [or Canadian])."[1] In Canada there has been complete supersession of the indigenous systems of social control, whereas in Zimbabwe there has been limited recognition of African customary law in civil cases and of African tribal courts. However, in both countries the criminal law is founded entirely on Western values and has often been used as an instrument to regulate and change the lifestyle of the aboriginal peoples. An important difference between the two countries is that in Canada the settlers came to constitute the majority in the population, whereas in Zimbabwe the aboriginal peoples have comprised the majority throughout. Although the African peoples of Zimbabwe are now politically dominant, the writer believes that there will not be a reversion to the traditional lifestyle and that the impact of the imposition of Western norms on the aboriginal peoples will continue to be significant.

Such criminal statistics as are available reveal a serious clash between the aboriginal peoples and the criminal justice system in each country, and indicate differences in the level and nature of recorded crime between the aboriginal peoples and the other peoples of each country. It seems likely that these differences are attributable, in part at least, to discriminatory factors in the operation of the justice process itself. But in view of the extent to which the general theories of

criminogenesis appear to pertain to the aboriginal peoples, it seems likely that the statistics also reflect some differences in the level and nature of actual criminal behaviour. It is submitted that the particular applicability of the general theories of criminogenesis to the aboriginal peoples can be related to a single feature: the impact of the imposition of Western norms on the aboriginal peoples. This has had the effect of destroying a culture; that is not to say that no aspects of the aboriginal cultures have been preserved, but that the imposition of a Western type normative order precluded the continuance of the traditional cultures intact; at the same time, the way in which Western norms have been imposed in each country (a combination of segregation and forced assimilation) has prevented either the assimilation of the aboriginal peoples into Western culture or the emergence of an integrated culture. It appears that the normative conflicts and disorders and the discrimination and alienation which result from this state of affairs are at the root of all types of explanation of aboriginal criminality. Not only does the persistence of traditional norms produce direct conflicts with the Western criminal law, but the anomic state of aboriginal society and of aboriginal individuals causes a variety of social problems which contribute to aboriginal criminality; the problems are accentuated by the fact that it is the dominant Western groups in each country who determine both which

acts and which individuals are labelled as deviant or criminal.

Action with regard to aboriginal criminality presents peculiar problems. In many instances, deviance from imposed legal norms does not lead to any social sanctions against the offender, with the result that these legal norms depend for their effectiveness solely on the application of structured legal sanctions. The Western criminal justice system through which such sanctions may eventually be imposed contrasts with the traditional justice systems of the aboriginal peoples, and there is clearly scope for misunderstandings, alienation, and injustice. Numerous proposals for specific reforms in the legal system have been made and some such proposals have been successfully implemented in particular areas. But it is submitted that substantial improvement will only be achieved if a coherent programme for reform of the legal system as a whole is devised and implemented in each country. Furthermore, it seems clear that the legal system is not the whole, or even the main, problem and that wider political and social changes would be required in order to get to the root of aboriginal criminality. Essentially, there appear to be three main options as regards the relationship of the aboriginal subcultures with Western culture: assimilation into it, integration with it, or separation from it. It seems that each such option offers particular advantages and disadvantages and

would present particular problems in implementation. A prerequisite to rational reform is further research to identify with greater certainty the problems in the existing social structure and to identify alternative options and clarify their implications.

Footnotes (Chapter V)

1. Mittlebeeler p. 203.

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